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EXPORT ADMINISTRATION ACT

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

OVERSIGHT ON THE COMMERCE DEPARTMENT'S FULFILLMENT OF ITS RESPONSIBILITIES UNDER THE EXPORT ADMINISTRATION ACT

FEBRUARY 3, 1983

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EXPORT ADMINISTRATION ACT

THURSDAY, FEBRUARY 3, 1983

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 9:30 a.m. in room SD–538 of the Dirksen Senate Office Building; Senator Jake Garn, chairman of the committee, presiding.

Present: Senators Garn, Heinz, Hawkins, Mattingly, Hecht, Proxmire, and Lautenberg.

Also present: Senators William S. Cohen and Sam Nunn.

OPENING STATEMENT OF CHAIRMAN GARN

The CHAIRMAN. The Banking Committee will come to order.

May I first take the opportunity to welcome Senator Hecht to the committee. We're very happy to have you as a new Republican Senator and a new member of the Banking Committee, and we can tell you are a freshman, because you're here! [Laughter.]

I did the same thing. I started over there, and I'd come on time, and I'd say, "Where is everybody. There was a hearing announced." But you'll get used to it after a while. But you and I will apparently be starting a lot of hearings together this year. The rest of the Senators will drift in as their schedules permit. But we are happy to have you here.

Senator PROXMIRE. I'm almost on time.

The CHAIRMAN. You're only 30 seconds late.

Today the committee begins its formal review of the Export Adminstration Act of 1979. That act expires on September 30 of this year, and in one form or another, it must be reauthorized.

For over 30 years, the Commerce Department has been at the hub of our export control operations, so in reviewing this act, and our export control system, it is entirely appropriate that we begin with a review of the performance of the Commerce Department in carrying out its responsibilities under the Export Administration Act.

Many of us are not new to this issue. Because of what I thought were unresolvable inadequacies in the Commerce Department's fulfillment of its export administration responsibilities, late last Congress I reintroduced a proposal that I first put forward in the 96th Congress. This proposal would remove the primary export administration functions from the Commerce Department and place them in an independent Federal agency called the Office of Strategic Trade.

I intend to reintroduce that proposal today. I am grateful to be joined in this effort by the distinguished ranking minority member of the committee, Senator Proxmire, along with several other members of the committee and others of our colleagues in the Senate.

In addition to removing operations from the Commerce Department, the bill makes several additional changes in the Export Administration Act which have been suggested by knowledgeable people in the export control field.

I have included these in the bill, because I feel they merit close consideration.

I would like to emphasize, however, that the bill is a working draft. I fully expect that changes will be suggested, and I want it to be known that I am open to suggestions.

Protection of our crucial national interests through appropriate export control measures, particularly in light of the high priority assigned to obtaining Western technology by the Soviet Union and its surrogates, is beyond the wisdom of any particular Senator. This bill represents much of what some of my colleagues and I consider to be the best solution, but I remain open to any suggestions for improving the legislation, and I look forward to working with others in introducing an export control bill that responds to our national interest, as fully as possible.

We will not be able to expand trade with the Soviet Union to any significant degree until we can be sure that we can do so without jeopardizing high national priorities. Until then, our trade will be, at best, stop and go. We will not be able to respond to those dangers until we give the same priority, resource, and clarity to effective export controls as the Soviets devote to circumventing them.

Our current export administration system simply does not meet our needs. Trade opportunities are unnecessarily lost while critical goods and technologies find their way into the hands of our adversaries.

When I learn that 98.8 percent of all export license applications in fiscal year 1982 were approved, I wonder how many of those applications were totally unnecessary.

At the same time, I ask where our export control efforts have been directed, when we receive intelligence reports listing the advances in computer, laser, electronics and antisubmarine warfare and other critical technologies that the Soviets have obtained from Western sources.

We will begin this inquiry today by evaluating the performance of the agency given the primary authority in our export control system. I appreciate the efforts that have been made by this administration to improve export administration, but at this point I consider them inadequate. Today and in the next few weeks, we will be evaluating what steps Congress needs to take.

I would say that when I first got involved in this several years ago and first introduced an OST bill, nothing much changed. Then with the new administration, I specifically withheld reintroduction of that bill in 1981, giving the new administration an opportunity to make some improvements. Some improvements have been made, but in my opinion, they are not nearly as adequate as they should be. We still have a sieve that hardly catches anything, and yet, in many cases, impedes justifiable exports.

That's why, once again, I'm introducing the bill. I think 2 years was long enough to wait and show patience. And now we will proceed to try through legislation to stop this hemorrhage. I think it is fair to say hemorrhage of strategic goods to our adversaries; at the same time, we have been placing unnecessary roadblocks in front of exports that have no strategic importance at all.

I think everybody should know that not only I, but other members of this committee, are not going to wait any longer. We are going to push forward and make every effort we can to stop this, because at the same time we are now in a great debate over the military budget. I realize it's impossible to quantify it exactly, but I wonder how many billions of dollars are necessary in this defense budget, because of the lack of performance of the Commerce Department and the State Department over the years in selling critical technologies to the Soviet Union that improve their military capabilities and cause us to vastly increase our own defense spending as a result.

We might find it would be easier to cut back on the defense budget to help balance the budget in the future, if we could plug this gap. It's a subject that I am going to continue to be interested in. I am not going to accept the excuses of the past; I am not going to accept the rhetoric that we will improve.

Nearly 6 years have passed since I started talking about this, so we are going to push forward, and I want to make that very, very clear.

The room is filled with lots of people who are interested in this, and I suppose there are a lot of industry lobbyists. As one who I think would be known as not only a fiscal conservative, but certainly on the side of free enterprise, I think I would say that I have been a friend of the business community in this country, but not at the expense of the security of this country.

I am open to suggestions on this bill, but if industry wants to come in and blindly approve the status quo and continue to have this hemorrhage, solely for the purpose of profits, then you are going to find an adversary.

So I say at the outset, if you want to cooperate, we can work together and put together a bill that is fair and would allow exports that are not hurting the security of this country. Fine; we will work together, but blind opposition to the bill, unwillingness to work on it, unwillingness to try and achieve consensus, is not the way to go to stop this hemorrhage of critical technology. Profits are not that important. I would hope we could work together. Six years is long enough to wait to improve the situation.

Senator Proxmire, do you have any comments you wish to make?

OPENING STATEMENT OF SENATOR PROXMIRE

Senator PROXMIRE. First, Mr. Chairman, I just want to congratulate you on introducing this legislation. As you say, I am a cosponsor, and I am proud to be a cosponsor. I'm delighted to hear your vigorous and forthright statement this morning, which I endorse wholeheartedly. You're exactly right, and I think as a matter of fact, what this legislation tries to do is to recognize that, as one Commerce Department official has admitted, and I quote, "The De-

partment cannot be expected to simultaneously administer export promotion and control policies." There's a conflict there.

The chairman of the committee, I think, has been patient and is now going to vigorously fight for this legislation, and I am delighted to hear it, and I'll do all I can to help him.

The CHAIRMAN. Thank you very much, Senator Proxmire.

I am especially pleased today to have as the first witness our distinguished colleague, Senator Cohen from Maine, who has also been involved in this problem for many years and has been very helpful and supportive to the Banking Committee, as well as working very vigorously in his own committee assignments on this problem.

Bill, we're happy to have you as the first witness today.

STATEMENT OF WILLIAM S. COHEN, U.S. SENATOR FROM THE STATE OF MAINE

Senator COHEN. Thank you, Mr. Chairman.

I appreciate the opportunity to address the Banking Committee, as you consider the authorization of the Export Administration Act which comes up for removal this year.

THEY SHALL BEAT THEIR SWORDS INTO PLOWSHARES

I was interested to hear your comment, Mr. Chairman, that "profits are not that important." I think if anyone should visit the United Nations Plaza in New York City, you will find a statue there inscribed with a quote taken from the prophet Isaiah, a different kind of prophet. It says, "They shall beat their swords into plowshares."

Now there is nothing particularly unique about the statue or the fact that it's there at the United Nations. We would expect that to be there with that sort of inscription. But the irony is that the statue was given by the Soviet Union to the United Nations.

I find it somewhat ironic, since not only do they not subscribe to the wisdom of the words of Isaiah, but they do not place the Gideon Bible, as far as I'm aware, in most of their hotels. [Laughter.]

But they continue, and have continued over the years to do just the opposite, that is to beat their plowshares into swords, with, as you've suggested, Mr. Chairman, considerable aid and assistance from the United States.

I think that we only need to look at the represssion in Poland, the butchery in Afghanistan, the continued clouds of yellow rain that hang over Cambodia and Laos. To remind us of the danger of reading concrete meaning into rather empty words and similies on the part of our adversaries.

DRASTIC REFORM NEEDED IN TECHNOLOGY TRANSFER POLICY

Mr. Chairman, during my few years in the Senate and certainly in the Congress I have not supported reorganization plans as a means to improve policy goals, unless there is a clear record of abuse or ineffective policy. I can think of no area of policy that is in need of more drastic reform than that of the issue of technology transfer.

Some of the highest officials of the Soviet Government are charged with directing attempts to steal American technology. All variety of means are used in this task, including exploiting published journals, trade fairs, academic conferences and outright theft and/or bribery.

By contrast, our own Government continues to assign a low priority to the task of protecting our technology from such thefts. The Department of Commerce is responsible for administering export control policy along with several other functions as diverse as ocean policy, fisheries management and census statistics.

Now the International Trade Administration, where the Office of Export Administration is housed, I think it's clear, has an export promotion bias. Senator Proxmire mentioned this. A recent study by the Heritage Foundation points out that within the organizational structure at ITA, the important policymaking officials are charged with trade promotion. In contrast, export control functions are administered by an Assistant Secretary, a bureaucratic level that has difficulty prevailing on policy questions.

I believe these factors alone would argue for the establishment of an Office of Strategic Trade, independent of the Commerce Department, as called for by your legislation.

At the outset, I would like to make clear that improvements in technology transfer policy have been undertaken by this administration. As you pointed out, Mr. Chairman, under the direction of Lawrence Brady, Assistant Secretary for Trade Administration, a number of improvements have been made, including increased ties with the intelligence community, increased personnel staff resources in the critical Silicon Valley area, an improved data base to improve foreign availability, which I'll talk about in a moment.

And while I think these are improvements, they simply don't go far enough. I think that we have to deal with basic reorganizational structure, rather than leaving it to the political whims of a different administration that might change in the next administration or thereafter, as to what kind of emphasis they are going to place on the control of our technology.

So I think we have a continuous export control policy which remains in existence, aside from who happens to be occupying the White House.

INADEQUATE ENFORCEMENT POLICY

Our export control system is characterized by a host of problems, ranging from too few resources to inadequate enforcement policy to a lack of coordination among agencies with export control responsibilities.

Perhaps these difficulties, some of them at least, are inherent in our political system, which depends on a free exchange of information. This strength of ours, however, is also responsible for maintaining a technological lead over our adversaries and to protect our national security.

In spite of this, I think some improvements have to be made, and I am forced to conclude that the Commerce Department has simply failed to hold up their responsibility for administering this policy,

which has been at least advocated by you and others in the Congress.

I'd like to cite just a couple of examples.

The Compliance Division of the Export Administration is charged with the enforcement function for export controls. This unit is understaffed; it's undertrained for investigative requirements, and it's illequipped for law enforcement procedures. In fact, the investigators for the Permanent Subcommittee on Investigations, PSI, noted in their report that the Soviet KGB, itself, could not have organized the Compliance Division in a manner more helpful to Soviet objectives.

In June of 1982, the Inspector General of the Department of Commerce submitted his findings, which are critical of the Department's performance in this area. I'd like to quote from the report.

> It is clear that the Department's failure to provide adequate resources, policy guidance, and management direction, has impeded the compliance effort and produced, at very least, the perception of a de facto supremacy of trade promotion over the Department's export control functions.
>
> What is also clear from the findings in this report is that the Department of Commerce has not taken a bold lead in forging an aggressive multiagency effort to halt the illicit export of controlled products.

I would urge the consideration on the part of the committee of another part of export control policy that really doesn't involve or reflect on the Department of Commerce's activities. Nonetheless, it is of interest to me.

The Soviet Union is allowed to participate in formal student exchange programs and attend academic conferences in the United States. The only control on participation is through screening by the International Research and Exchange Board, the IREX, and the visa approval process.

UNEQUAL STUDENT EXCHANGE PROGRAMS

Mr. Joseph Arkov, a former Soviet engineer, in his testimony before our subcommittee last year, characterized the student exchange programs as an unequal exchange of information. While the Americans are limited to studies of Russian history and culture of the Soviet Union, senior Russian officials are sent to this country to study hard sciencies and computer technology at our finest university.

I'd like to give you just a couple of examples, Mr. Chairman, because I asked this question during the course of the Carter administration, when similar questions were being raised.

To what extent do we have to increase our defense budget to constantly try to maintain parity and quality with the Soviet Union, which seems to be acquiring more and more of our technology?

I asked about the question of balance between our exchange programs with the Soviet Union.

Dr. Perry, Deputy Secretary of Defense at that time, testified before the subcommittee. I asked him whether or not he had a list of the students who were studying in the Soviet Union, where they were studying, what subjects they were studying, and whether we

had a comparable list of all Soviet students studying in this country. He presented me with that list which I'd like to submit it for the record.

[The following was received for the record:]

The lists requested are included herewith. Each number represents a separate student.

Exchange of Graduate Students and Young Faculty with the Ministry of Higher and Specialized Secondary Education of the U.S.S.R. and the U.S. International Research Exchange Board.

American nominees' topics[1]

Topic of study	*Placement requested*
1. Ideas about the Russian East in the 19th Century Russia and the Role of Geographical Science in Shaping them.	Moscow State University (MSU).
2. The debates over the Democratization of the military: 1866–1881.	MSU.
3. Managerial training in the Soviet Union	MSU.
4. The structure of the pre-revolutionary peasant household and village in the Central-Industrial Region.	MSU.
5. Survey of manuscripts and archival materials in the U.S.S.R. pertaining to the United States.	U.S.S.R. Academy of Sciences, Institute of History, Moscow and Leningrad.
6. The Russian War Economy, 1914–1917	MSU.
7. A critical study of the Life and Work of Nikolaj Alekseevic Zabolockij.	MSU.
8. Musical Genres in Russian Music, Last half of the 16th Century through the First Half of the 18th Century.	Moscow Conservatory, Leningrad, Conservatory.
9. V malen'koj rame Pushkin's Fragmentary Fictions.	Leningrad State University (LSU).
10. Soviet Ethnographic Conservation Techniques.	Central Conservation Institute, Moscow.
11. Soviet Legal Culture	MSU.
12. Veniamin Kaverin's *Ispolnenie Zelanij:* External and Internal Frames of Reference.	LSU.
13. Neokantin Influence on Russian Aesthetics in the First Two Decades of the 20th Century.	MSU.
14. The Naqshbandi in the Late Timurid Period.	Tashkent State University.
15. International Trade Law Among the Member-Countries of EOMECON.	MSU.
16. A study of Soviet Tort Law	MSU.
17. A study of Aspect in Batsbi and Avar	Georgian Academy of Sciences, Linguistics Institute, Tbilis.
18. Pribilof, Commander and Aleutian and Aleuts A Comparative Study.	U.S.S.R. Academy of Sciences, Institute of Ethnography.
19. The Development of the Court System and the Advocacy in the USSR: 1953–1958.	MSU.
20. Vasilij Makarovic Suksin 1929–1974	MSU.
21. A study of the Experience and Successers of the Soviet Socialist Planned Economic System: Capital Investment and Allocation in the Energy Sector.	MSU.
22. Interaction of Ionophore X-537A with Biogenic Amines.	MSU.
23. The Problem of the Person in Soviet Philosophy of Social Science.	MSU.
24. A study of Artistic and Journalistic Texts by Dostoevsky from the Standpoint of the Semiotic Approach to Culture.	MSU.
25. The Administration of the Russian Empire Under Catherine the Great, 1762–1796.	MSU.
26. A Comparative Semantic Analysis of Verbal Aspect in Russian and Serbo-Croatian.	MSU.

[1] Only 45 Americans were selected since 45 Soviets came to the U.S. We do not know which 5 of the above 50 were not selected.

Topic of study	*Placement requested*
27. A study of Structural and Formulaic parallels between Igor Tale, *Skazanie o mamacrom poboisce*, the Azov Tale and the Russian Oral Tradition.	LSU.
28. Three Liberal Westerners in the Westerner Circle.	Erevan State University.
29. An Examination of the Observable Predictions of Gravitational Gauge Theares.	LSU.
30. Crime in St. Petersburg, 1890–1917	MSU.
31. A comparative study of Russian Symbolism and *Mloda Polska*: Literature as myth-making.	MSU.
32. Publication for the people: A study of the Development and Impact of Legally published Literature on Russia's Workers and Peasants, 1876–1916.	MSU.
33. Narrative Typology of Soviet Novels of the Twenties.	MSU.
34. Cychic Rule Ordering in Russian Phonology	MSU.
35. The Russian Working Class and the Russian Labor Movement during the First World War.	MSU.
36. The Planning and Design of the Soviet Environment: How is it done?	Moscow Architectural Institute.
37. Anomalous Osmosis from the Perspective of Capillary Osmosis and of Professor B. V. Deryagin.	U.S.S.R. Academy of Sciences, Institute of Physical Chemistry, Moscow.
38. Aria, Arioso, Recitative and Ensemble in the operas of Sergei Prokofiev.	Moscow Conservatory.
39. Armenian Philology in the Evolution of Soviet Linguistries through N. Ya. Marr.	Erevan State University.
40. Pushkin's Response to Scott: *Kapitanskaja docka*.	MSU.
41. The Byzantine and Slavic Systems of *Stichera Automela* and Prosomoia.	Moscow Conservatory and Leningrad conservatory.
42. The Scientific Approach to Decision Making and the Role of the Soviet Experiment.	MSU.
43. Strategic offense and defense in military planning before 1914: A Case Study in the Psychology of Choice and Perception.	MSU.
44. Continuation of Archaeological and Archaeozoological Research at the Upper Paleolithic Site of Mezhirich, Kanev Region, Cherkassakaya Oblast.	U.S.S.R. Academy of Sciences, Institute of Zoology, Kiev.
45. A Study of the Linguistic basis of Pushkin's Iambic Tetrameter.	LSU.
46. The Role of the Social Principle (Obshchestvennost') in the Theory and Practice of Local Administration.	LSU.
47. The Early History of the Conservation Movement in Russia and the Soviet Union.	MSU.
48. Patterns of Communication by Sex and Age Among Urban Russians.	Institute russkogo japyka in A.S. pushkina, Moscow.
49. Ergodic Theory of Group Actions and Foliations.	MSU.
50. Regional Development in the USSR: The Case of Soviet Central Asia.	MSU (6 months) Tashkent State University (4 months).

Soviet nominees' topics

Topic of study	*Placement assigned*
1. Research in the theory and applications of measuring-computing systems for automation of scientific experiments and testing power engineering objects.	University of Pennsylvania.
2. Research of the effect of various technological and constructive parameters on the properties of thin film covers.	Do.
3. Research of interaction of ions and plasmas with solid surfaces, especially with compound surfaces which are used as construction material for vacuum chambers of fusion devices.	University of Michigan.
4. Conduct experiments for accommodation coefficients measurements to include, rarefied gas dynamics, experimental methods and measurement techniques, flow phenomena, thermo-molecular difference in channels, etc.	University of Wisconsin.
5. Study the correlation of international and national law in the juridical science of the U.S. and the possibility and method of applying computers in scientific research in the field of interaction of the two legal systems.	University of Georgia.
6. Research modern methods of wall flow diagnosis, mathematical models in use, methods of heat and mass transfer calculation for flows through porous structures at low Reynolds numbers and also for external flows of viscous compressible fluids around bodies.	University of Minnesota.
7. Research synthesis of variable valency metals and lantanoids on the basis of dialkylaryldithiophosphonate acide ethers and study their complex structures and properties as catalysts in some chemical reactions.	New York Polytechnic Institute.
8. Research of electric, photoelectric and luminescent properties of single-crystal ZnSe and heterojunctions nZnSe-pGaAs; noise characteristic of the heterojunction nZnSe-pGaAs as a solar cell.	Carnegie Mellon University.
9. Research in the field of fruit sorting process; on the optical characteristics of fruits; sensors and methods of the output signal treatment for automated fruit sorting process and testing fruit sorting systems.	Cornell University.
10. Research on the problems of propagation of weak disturbances and shock waves in multiphase reactive media and flow.	University of California, Berkeley.
11. Research in the area of heterojunctions between A3B5 and A2B6 semiconductor compounds with various discrepancy in crystallographic constant; photoelectric and luminiscent properties of heterojunctions, level of previous lighting and value of applied tension.	Stanford University.
12. Research on the internal political conditions in the People's Republic of China during 1969–77.	University of Michigan.
13. Research on the U.S.-Middle East policy making process using official U.S. and Israeli government documents from the Library of Congress.	American University.

Topic of study	*Placement requested*
14. Research and experiments on acoustooptic interaction in optical wave-guides; study in detail acoustooptical interaction in diffusion type wave-guides on LiNb03 substrates and in thin-film wave-guides.	University of Texas, Arlington.
15. Research in ribosomal small subunit structure from E. coli and yeast, the study of rRNA topography and function by chemical modification, nuclease digestion and oligonucleotide binding, and the development of RNA sequencing methods.	University of California, Santa Cruz.
16. Research modern methods of mathematical simulation, deterministic and stochastic methods of optimization, principal features of constructional and technological realization of microelectronic apparatus for elaborating universal techniques for optimal decision making in the automated design system.	Carnegie Mellon University.
17. Research possible approaches to a balance of payments model; modern U.S. foreign exchange system, modern foreign exchange policy of the U.S.; U.S. foreign trade financing; international activities of the U.S. commercial banks; and IMF and IRBD policy and operations.	Princeton University.
18. Research on the topic of gas and vapor permeability and morphology of composite polymer materials, namely crystalline polymers, copolymers, blends and filled polymers and investigate sorption and diffusion properties of this system.	State University of New York, Albany.
19. Research in the field of automatic control as applied to space ships; development of recurrent methods for navigation in space and optimal filtration of hindrances.	Massachusetts Institute of Technology.
20. Research theoretical methods and experimental results of research of interaction of high frequency of electromagnetic fields with plasma; the original theoretical methods and experimental results of research of high frequency plasma heating; the application of computers for solving plasma stability and heating problems, and the theoretical methods of MHD-stability of plasma.	University of Wisconsin.
21. Research on (1) the principles of analog computer design for solution on non-linear partial and ordinary differential equations; (2) problems of nonlinearity generation; (3) methods of solution of nonlinear partial and ordinary differential equations with analog electronic computers; and (4) principles of their programming for solution of such differential equations.	University of Colorado.
22. Research on pneumatic mechanisms, especially those used to drive robots and manipulators, as well as control systems using pneumatic elements; study dynamic characteristics of various types of pneumatic drive mechanisms combined with pneumatic control systems of motion, etc.	University of Texas, Arlington.
23. Research in Limit theorems of probability theory and their application in mathematical statistics.	University of Delaware.

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Topic of study	*Placement requested*
24. Research on: (1) heat and mass transfer in ranges of vaporization and condensation of heat pipes; (2) maximum surface heat flux in low temperature heat pipes; (3) intensification of heat transfer capacity of low temperature heat pipes; (4) engineering methods of low temperature heat pipes; (5) designing calculations and calculation methods for heat exchanges on heat pipes; and (6) investigation of heat pipes, which operate under conditions of cold production.	University of Kentucky.
25. Research of: (1) Methods of determination of the Ardeno-corticotropic hormone in hypophys; (2) Methods of determination of corticosteroids (corticosterone gudrocortison) in the blood; (3) Latest achievements in the experimental techniques with determination hormones in blood; and (4) study of functional state of the hypophysadrenal system under the condition of the organism high and low temperature and hypocsia.	University of Southern California, Los Angeles.
26. Research in the field of polyether, eposypolyether and other polymer compositions and coatings with increased flame resistance to different synthetic polymers and application of fireproof filling materials, hardners, etc.	University of Lowell.
27. Research in the field of optimal design of elastic constructions; constructions of anisotropic materials; methods of problem setting; calculations of limits, methods of solution, etc., and their application in the study of plants.	New Jersey Institute of Technology.
28. Research on: (1) Cultivation of insect cells in monolayer and/or suspension for the following accumulation of viruses; (2) Isolation and purification of viruses from the insect cells; (3) Studying of morphology and ultrastructure of viruses; and (4) Investigation of process of virus interaction with the insect cells.	Yale University.
29. Research with computer assistances dealing with automobile system modelling in the field of automobile turning control; perfection and modernization of construction of turning control mechanisms, etc.	University of Michigan.
30. Research in the field of: (1) methods of telemetered data conversion for obtaining reliable estimations of power transmission network structure and state; (2) compare efficiency of methods of data conversion; (3) master the procedure proving the rational accuracy of mathematical modelling of power systems; and (4) investigate the properties of methods for load flow calculation and optimization.	University of Colorado.
31. Research connected with the creation of modern methods of design and effective application of computer aided design (CAD) systems.	University of California, Los Angeles.
32. Research in the field of hydrodynamics of high-speed ships using the matched expansions method.	University of Michigan.

Topic of study	*Placement requested*
33. Research of physical and chemical aspects of the combustion process in high-speed reciprocating engines with focus.	University of Wisconsin.
34. Study the theoretical works by American economists doing research in the field of technological theories of scientific and technical revolution; make a study constant capital development in the manufacturing industry of the U.S.; become acquainted with the ways of teaching social sciences at schools in the U.S.	University of Illinois.
35. Research on the methods of standardization and control of the quality of diagnosis, live and inactivated vaccines against virus diseases of cattle; master methods of maintenance and evaluation of genetic uniformity of some virus vaccine strains of bovine pneumoenteritis (sic); study the terms of appearance of stable local immunity after the application of nasalgens; modelling of unsatisfactory postvaccinal reactions in cattle and obtain antiserums to viral antigens.	University of Maryland.
36. Research in the recombination and mutagenesis in animal viruses; cultivation and selection of various mutants of these viruses with special emphasis in the selection of mutants with new recombination forms of animal viruses.	University of Texas.
37. Experimental research in the field of heat transfer and fluid flow during condensation of refrigerants with X dryness varying from 0 to I at the inlet and outlet of the tested condenser to estimate actual varpor content of the mixture by modern methods, and to obtain local characteristics of the process through heat transfer and fluid flow data, etc.	Massachusetts Institute of Technology.
38. Research in the field of estimations of resolvent of elleptic differential operators with non-linear spectral parameter and related eigenexpations (sic) problems; new estimations of entire functions and factorization theorems of operator-functions and tauberian theorems.	University of California, Los Angeles.
39. Research on enzymatic and microbial modification of a number of physiologically active compounds.	University of Pennsylvania.
40. Conduct analytical research on problems dealing with; automatization methods and use of microprocessors for construction of intelligent experimental data collecting and processing systems; methods of development and design of non-stationary processes measuring systems in case of signal/noise spectrum super-position; investigate registering data processing for the purpose of the most meaningful parameter registration; methods and experience of microprocessor use in online and real-time data processing mode; etc.	University of Colorado.
41. Research on the contemporary trends, problems and objectives of the U.S. mass media, analyze network news programs, the role of public television; explore the political evolution of American society and the role played by mass media; changes in the future content and form of news; and changes in technology.	University of California, Berkeley.

Topic of study	*Placement requested*
42. Research in the field of (1) complex precision techniques for experimental investigation of thermophysical properties of working bodies and insulation materials in a wide range of temperatures and pressures; (2) prediction and analytical studies of properties of individual, substances, their mixtures and solutions; (3) applying methods of mathematical experiment; etc.	Northwestern University.
43. Research connected with (1) system analysis approach to large power systems, in particular to develop nuclear energy and; (2) develop mathematical models and mathematical methods to carry out complex optimization of developing power reactors and plants systems using both natural and economic criteria. On the basis of these models, subject desires to make codes and carry out calculation and optimization investigations for systems of different types of power reactors.	Dartmouth College.
44. Research on (1) the methods of two-phase flow diagnosis to determine the shape, concentration and compound of solid particles; (2) examine the methods gas flow clearing from solid particles; (3) conduct theoretical and experimental research on the efficiency of gas flow cleaning by different devices; and (4) examine the electrical filter performance for sharing gas flows and to examine the usable scientific equipment and modern methods of experimental data processing.	Georgia Institute of Technology.
45. Research in the field or wear of cutting tools; choice of material for cutting tools, determination of the optimum cutting conditions and modern methods of technological processes design automation.	Pennsylvania State University.

Senator COHEN. Just to give you an idea of the imbalance that has taken place, let me just read you a couple of items.

For Americans studying in the Soviet Union at MSU, that's Moscow State University, topics included ideas about the Russian east in the 19th century Russia and the role of geographical science in shaping them; debates on democratization of the military, 1866–81; musical genres in Russian music, the last half of the 16th century through the first half of the 18th century; the administration of the Russian Empire under Catherine the Great, 1762–96; a study of the linguisitic basis of Pushkin's iambic tetrameters.

The list goes on. I've only quoted a few. Let me just compare that briefly with Soviet exchange students and I'll ask that the full list be submitted for the record.

As far as Soviet students in the United States; topics of study include research in the theory and application of measuring computing systems for automation and scientific experiments and testing power engineering objects; research of the effect of various technological and constructive parameters on the properties of thin film covers; research and interaction of ions and plasmas with solid surfaces, especially with compound surfaces which are used for construction material for vacuum chambers of fusion devices; research in the field of automatic control as applied to spaceships and development of recurrent methods for navigation in space and optimal filtration of hindrances.

The list goes on and on. That, to me, is perhaps the most dramatic disparity that exists, and frankly, it makes absolutely no sense to me to have an export control policy. It makes no sense to me to create a new Office of Strategic Trade Control if, in fact, we are going to control the export of products or control the theft and sale of products, and at the same time, hand the same information over to their top scientists who, in turn, take that information back to the Soviet Union to employ it for military purposes.

SOVIET ACQUISITION OF WESTERN TECHNOLOGY

According to a 1982 CIA report entitled "Soviet Acquisition of Western Technology, more of one-third of proposals offered in the last 2 years under the IREX program were completely unacceptable in terms of potential technology loss. Yet Soviet scientists are allowed to come to this country to study such fields as fuel air explosives, lasers and microelectronics, fields which have direct military application.

Mr. Chairman, I, like you, have been somewhat frustrated with the amount of discussion that has taken place over the last few years on the need to have an export control policy, yet we find very little in the way of action having been taken. I think that this office does represent a very important step forward to try and curb that hemorrhage, stop the hemorrhage that you referred to.

I'd like to just mention briefly—I know I am trespassing on your time—two caveats. It seems to me we're still faced with two problems here, two major problems.

Assuming that we create this new office, assuming that we put the controls for inspection in the hands of our systems officials, assuming we enhance our inspection personnel at every exit port in

this country, we are still going to be plagued with the problem of how to deal with such items as microchips, computer tapes, being smuggled out of the country. There is virtually no way to detect that.

On the other hand, we're going to be plagued with questions of dual use. Ceramic tiles, for example, can be used for commercial purpose. They can also be used for utilization on space shuttles.

We also know that microwave ovens can be applied not only for domestic and commercial purposes, but the paint from those ovens can be applied to cell technology.

So I'm not saying this proposal is going to be a panacea or is going to solve in itself the hemorrhage that continues to flow today, but to say that we can't do everything doesn't mean that we shouldn't do something.

That's why I think this legislation is a very important step forward to at least focus the attention on what we're trying to do, and that is to control the flow of these goods and materials.

DEALING WITH U.S. INDUSTRIALISTS

A final point. You referred to the people who are in this room today, many of them perhaps leading industrial personnel. It's been a continuing problem on the part of all of us dealing with our industrialists in this country. On the one hand, they have a legitimate point to make. They say:

> How can you possibly interfere or stop the sale of this computer to the Soviet Union, because if we don't sell it to them, what's going to happen? The French will, the British will, the Japanese will, some other, one of our other countries, our allies, will sell the same technology. We will be deprived of the profits from that sale, the profits of which we could reinvest in R&D to keep us 5, 6 or 10 years ahead of the Soviet Union. So you're really only cutting of our nose rather than the nose of the Soviets.

That is a valid complaint on the part of the business people who come before this committee. I know they're gearing up, for example, to pressure this Congress, this administration, not to engage in restrictive trade policies with the Soviet Union or any other country.

And I agree with you, Mr. Chairman, we simply have to have a balance. We simply cannot pursue profit at any cost. But the problem is, that unless we have honest, strategic trade controls that is combined with a foreign policy which reflects that policy, then it is meaningless.

To the extent that the Soviets can acquire technology from our allies, to the extent that our allies can feel free to engage in trade policies with impunity, notwithstanding the protestations of the United States, it seems to me it is a totally counterproductive state of affairs.

I believe the President of the United States was right in the principle that he was trying to establish with respect to the Soviet Pipeline. I think the Soviet Pipeline is going to be one of the items which leads the Europeans to become even more dependent upon the Soviets, who will put themselves in a position of future blackmail, by virtue of their dependence on Soviet gas. Unfortunately, the President's point came too late, and I believe that it was not based upon the correct leverage.

He was saying that if you go forward with this project, we're going to undermine the Solidarity movement in Poland. Poland is not the issue. To the extent they become less repressive, we shouldn't open our doors any more to the Soviet Union at all. The point he was trying to make, and I think that, hopefully, will be made in the future, is that the allies have got to come to some sort of agreement as to what is in our collective national security interest. If the United States would declare, for example, that a certain technology is fundamentally adverse to our interests, we cannot allow our allies to be undercutting that with impunity.

Unless we develop such an agreement and such a consensus, then the unilateral attempt by this country to control the flow of technology will be, in my judgment, meaningless.

The CHAIRMAN. I thank the Senator from Maine. As usual, he's right on target.

I agree with every observation you have made. This bill is not a panacea. That's why I made it very clear in parts of my opening statement that it was a draft, it was open to suggestion and change to try and produce the best possible result we can for renewal of the Export Administration Act. But even if we're able to do that, you are also absolutely correct that unless we have some coordination of foreign policy, it can fall short as well, even though you change the organizational structure.

That gets to the point you made about the students. It is my information that it is not just happenstance, either, that the Soviet Union has a rigorous selection program. that they decide what their inadequacies are, and then specifically interview students on the basis of their qualifications to come to this country and absorb that type of information, whatever it is, where they are lacking, and then return with it.

It is absolutely incomprehensible to me that we have a debate about arms control and an arms race, and then we train their scientists to accelerate that arms race. That obviously is not the intent, but that is the result.

You, I, and Senator Heinz and others have been talking about that for years. That's why my statement was as strong as it was this morning about what we intend to do. It is time to come to some reasonable resolution of this and see if we can not only try and tighten up the sieve to stop some of this but make people a little more aware of some of the side issues that are not widely publicized, and make them more aware how much these problems are hurting this country in resolving our differences with the Soviet Union and in the expenses of our defense budget.

I thank you very much for your continued support on these issues in your other committee assignments, and would like to ask if any of the other Senators have any comments or questions of Senator Cohen.

Senator PROXMIRE. I would like to just ask Senator Cohen if he would comment on one thing.

First, I want to congratulate you, Senator Cohen, on an excellent statement, very thoughtful and very fair, and most constructive.

We have a witness following you a little later on. His name is Mr. Thau who says, "Based on my 26 years in the export control

area of the Department of Commerce," he says he has this observation, and I'd like your comment.

The Export Licensing Division was large and important, dealing daily with businessmen in a generally pleasant setting of export licenses. Its head was widely and favorably known in the business community. The director of the Overseeing Office of International Trade also had numerous and daily contacts with members of the exporting community, as part of his trade promotion duties. And he and the Licensing Division's head, could properly take pride in their good relations with businessmen in all parts of the country.

In that pleasant atmosphere, the head of the Compliance Branch, his agents, could only be like bulls in a china shop.

I'd like to ask you if you'd like to comment, based on your experience.

DIVIDED LOYALTIES

Senator COHEN. I can't say that I disagree with the observation about the atmosphere in which it was conducted. Frankly, you mentioned during your opening remarks, Senator Proxmire, about the dual loyalties or divided loyalties within the Commerce Department itself. You simply cannot have a situation where you are, on the other hand, charged with promoting export, and on the other, charged with controlling it. Those interests are going to dominate.

We found through our hearings in the PSI Committee and through the Government Affairs Committee itself, time after time, when there were critical items that should have been of interest to our national security people, they were overruled by the Commerce Department's incentive to promote the trade.

So it seems to me in an atmosphere such as that, that you're going to have these trade considerations dominate those of control.

So I would say you've got to pull it out of Commerce. You've got to take it out. So you don't have the friendly atmosphere. This has got to be looked at as objectively as possible.

Senator Garn has indicated he is a friend of business. All of us like to think that we're trying to promote the business of this country, but there comes a point in time when other concerns must dominate. I was just glancing through the PSI hearing record. I submitted for the record before Senator Jackson, at that time, an article by Carl Gershman called Selling the Rope: Business With the Soviets. I would submit it for your own perusual, if not for the record, so you might read time after time how we have heen selling them the rope consistent with the old Soviet dictum.

Senator PROXMIRE. That's that old Lenin quote, "When the Communists get ready to hang the Capitalists, the Capitalists will sell them the rope."

Senator COHEN. And probably will provide the scaffold and the trapdoor as well.

Senator HEINZ. With subsidized export credits.

The CHAIRMAN. He didn't anticipate that we would loan them the money to buy the rope. [Laughter.]

Senator HEINZ. Loan them the money free.

Senator COHEN. So I would say that we've got to have a more objective look at the items that are flowing into the Soviet Union. I don't believe you can get that within a department that is principally charged with promoting commerce.

Senator PROXMIRE. Thank you.

The CHAIRMAN. Thank you very much, Senator.

Senator Lautenberg, I'd like to welcome you to the committee. We are very happy to have you as a new member and pleased that you are here today.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Senator PROXMIRE. If I could just add, as the ranking member, I would like to say how fortunate we are to have Senator Lautenberg on this committee with his superb experience in business and his great success, and his understanding of so many of the things that come before us.

Senator LAUTENBERG. Thank you. I hope these are transferrable skills, Senator Proxmire. [Laughter.]

The CHAIRMAN. At least you have something to try and transfer. Some of us didn't have anything to begin with. [Laughter.]

Senator LAUTENBERG. Don't be so nice to me. This is going to get us all in trouble.

The CHAIRMAN. Before we proceed to the next witness, I would like to turn to Senator Heinz for a statement and also make the comment, as I did in my opening statement, of how much time and effort Senator Heinz has put into this issue over a long period of years, as well. He held hearings last year in his capacity as chairman of the International Finance Subcommittee of the Banking Committee.

I also would like to commend him for proceeding and following up this hearing in the full committee, starting in March, with additional hearings in the International Finance Subcommittee, and I really want to commend you, Senator Heinz, for your aid and help and your willingness to take a lead in this issue as chairman of that subcommittee of the full Banking Committee.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Mr. Chairman, thank you. I am glad we are getting off to a good and fast start with this oversight hearing on the act. This does, indeed, mark the first of a series of hearings that are necessary because the Export Administration Act expires on September 30 of this year.

We have a number of things to consider. Today we're going to be principally examining the performance of the Department of Commerce with respect to the act, and we will receive more comments on your proposal to create an Office of Strategic Trade.

For the record, the future hearings of the subcommittee, which will cover national security controls, will be held on March 2. hearings focusing on foreign policy controls will be held on March 16, and the remaining aspects of the act on April 6.

Those hearings, Mr. Chairman, focus specifically on legislative proposals to amend and extend the Export Administration Act. That includes your bill. It includes my bill, to both extend and amend the act, which I am introducing today, and I suspect legislation by Senator Nunn, who will be testifying later today.

Let me say to observers that there are going to be a number of similarities between our bills, and in many ways they complement each other. I don't happen to be a cosponsor of Senator Garn's bill.

I am not in favor of creating an additional independent agency for licensing and enforcement, but I wouldn't want anyone to get the idea from that that I don't share many of his concerns with respect to national security controls and lax enforcement. I am very deeply concerned about both of those issues. We intend to work together in that regard to solve this problem, even if he and I may start out from a slightly different point of view with respect to the organizational requirements to do it.

In addition, a number of the proposals in my view that I'm introducing today are taken directly from Senator Nunn's recommendations in his report of last year on the operation of the current system. It is a very thorough investigation, as documented in his testimony on many occasions, most recently this morning. It is an extremely thoughtful analysis. I commend it to every single member of both my subcommittee and the full committee, and I hope Senator Nunn won't mind if we continue to borrow from his excellent work.

Let me take one other moment to address what I believe are going to be the major issues that we're going to be taking up overall, not just today.

OVEREAGER LICENSING AND ENFORCEMENT

First, with respect to national security controls, there are questions of both overeager licensing and enforcement. We're going to examine that in some depth today. In the bill I'm introducing today, we also raise questions unique to the problems of high technology industries. I believe they deserve special consideration, as well as the question of how to make Cocom more effective, so we can move away from unilateral controls that frequently do not achieve our objectives.

PROBLEM OF FOREIGN AVAILABILITY

Secondly, there is the problem of foreign availability and the Commerce Department's ongoing failure to take seriously the mandate on foreign availability we wrote into the act 4 years ago. Failure to take foreign availability into account means that we punish our exporters without achieving any of our policy objectives. We accomplish nothing by denying an American export, when a comparable product, in fact, can easily be obtained elsewhere.

PROBLEMS WITH FOREIGN POLICY CONTROLS

Third, we need to examine problems that have arisen with foreign policy controls, failure to consider seriously the criteria specified in the act and in the extraterritorial problems created by last year's pipeline controls.

Regardless of the merits of that effort, Senator Cohen had a few words about that, few would argue that the way we used the act last year severely damaged our relations with our allies and our businesses credibility as reliable suppliers.

Prohibiting retroactive applications of controls, as my bill does, by the way, would solve most of this problem, although I believe there are a number of other meritorious approaches as well.

Mr. Chairman, we clearly will not have the time to get into all of those issues today, and we probably shouldn't, but by the time this committee finishes its hearings and completes it markup and is ready to go to the floor, I believe we will have studied each and every one of them and probably some others in more than sufficient detail.

I believe the committee is going to benefit from the very substantial work not only done by individual members of the committee such as yourself and Senator Proxmire and others, but people like Senator Nunn and Senator Cohen, who have come here today and who have proven a tremendous resource to this committee. I look forward not only to today's hearing and the subcommittee hearings later, but I want to commend you, Mr. Chairman, for a very fast and productive start on behalf of all of us who are concerned about this issue.

The CHAIRMAN. I thank the Senator from Pennsylvania. I'd just like to repeat a couple of things I said in my opening statement before you got here. Also we have yet to hear from Senator Nunn. He is tied up in a national prayer breakfast. So he will be here shortly to testify.

CONSENSUS EXPORT CONTROL BILL

Let me just quote a couple of sentences, because I want to make it very clear what Senator Heinz says. The differences we have in our approach are rather minor compared to the agreement that we have, so to emphasize that, when I said in my statement I would like to emphasize that my bill is a working draft, I fully expect changes will be suggested and I want it to be known that I am open to those suggestions. It still represents much of what some of my colleagues and I consider to be the best solution, but I remain open to any suggestions for improving the legislation. I look forward to working with others and producing an export control bill that responds to our national interests as fully as possible, not only with Senator Heinz but other members of this committee, Senators such as Senators Nunn and Cohen, and others who are not on the Banking Committee, but who have also worked long on this issue.

So I hope at the end of the process, although different bills in some respects are going in, some people have different ideas, that we will reach a consensus. That's why I wish to emphasize that my bill is a draft. I would expect at the end of this process, as Senator Heinz and the subcommittee analyze details of not only the bills but also of the various agencies charged with enforcement, that at the end of this process we would have a consensus bill that would generally be agreed to by all of the participants on or off the committee, because the overriding issue is how do we rationalize the need to export American technology, and at the same time stop the flow as much as possible of critical technology.

So I don't think anybody has any pride of authorship in individual provisions, and I wanted to emphasize what Senator Heinz says, that we will be working very closely as an entire committee. And Senator Nunn, as he said, has done some excellent work on this, although he's not a member of the committee.

Already there are suggestions from Senator Nunn, which I am perfectly willing to accept, that are great additions to both Senator Heinz' bill and my bill. That will be the process that we will go through before this act expires. That is the end result that we hope to produce.

Senator HEINZ. Mr. Chairman, if I may say so, I am glad you made that point. I trust that nobody misunderstood what I said in my opening remarks. I repeat what I said, because I agree entirely with what you say. Our bills complement each other. They are focused on exactly the same objective, which is rationalizing the export control process.

I think personally there is a better way than having a separate independent agency, but frankly, that's a minor detail to my way of thinking. I think form follows function. In this case, it's the function and its performance that concerns every member of this committee and both of us, I think, share some very grave dissatisfaction with the way the act is being administered. Exactly, organizationally, what changes, agencies among agencies, independent or otherwise, will need to be addresed within that text.

To me that's less important than solving what we require people to do to solve a problem. I think you share that. So anybody who thinks that we're not going to come up with a strong, unified position and a very good and responsive bill—anyone who thinks we're not going to do that, will be sadly disappointed.

The CHAIRMAN. I couldn't agree more with the Senator. If we can find a better way than creating a separate office, my general inclination is not to create new Federal agencies. I've just become convinced over the last 6 years that Commerce is incapable of properly administering the act and has proved so, not only over the last 6 years, but, if you investigate the past, over the last 30 years. The evidence is so overwhelming, Senator Cohen only briefly touched on it. He could go on for hours. I've heard him.

I think the evidence is overwhelming that they have not performed.

Senator HEINZ. Do you want to bring him back, Mr. Chairman? [Laughter.]

The CHAIRMAN. We undoubtedly will at some point in the process. The Senator is absolutely correct. What we want to have at the end of this process is a valid export control bill, whether that finally includes a separate agency or not. I suggest that because of the fact of my feeling that Commerce has such a bias and a mandate for commerce—I don't criticize that. That's what they're supposed to do. That's why the Department was created.

So at the end of this process, I think we can come up with a good bill, whether that includes a separate office or not, but I would have to be awfully convinced.

One thing I can say, with Commerce, there's going to have to be a great showing there.

Before we turn to our next witness—I'd like to welcome our distinguished Senator from Florida as a new member of the committee. I'm very happy to have her as a new member.

As a matter of fact, we're very fortunate to have six new members of the committee with us this year, which is an unusual

number. They're all bright and talented, and we're pleased to have them as members of the committee.

Senator Hawkins, we're delighted to have you here.

[Complete statement of Senator Hawkins follows as though read:]

STATEMENT OF SENATOR PAULA HAWKINS

Senator HAWKINS. Mr. Chairman, I want to thank and commend you and other members of the committee whose interest in this important subject has resulted in early hearings. Though the current Export Administration Act does not expire until September 30, I believe that it is constructive to begin the debate early so that we can give the issue adequate attention and address the problems that have become apparent in the 3 years since the act was last authorized.

These problems have been underscored, I believe, by the success of Operation Exodus. Operation Exodus was designed to cut down on the flow of high technology and sophisticated weaponry to the Soviet Union, its allies and certain Third World nations when such transfers are thought to threaten our national security. The intensified effort by the U.S. Customs Service to control the unlicensed and illegal export of high technology has exposed the magnitude of this technology leakage. I believe that we owe a debt of gratitude to the Customs Service for raising our awareness of this important issue. There is little doubt in my mind that the Soviet military buildup over the last two decades has been facilitated by ready access to American technology. And any improvements in Soviet arms that have resulted from our technology invariably come back to haunt us. These U.S.-inspired Soviet improvements compel us to spend additional dollars to maintain our technological lead which is our only counter to the numerical superiority of the Soviet Armed Forces over our own. We are living with some of the consequences of this technology leakage today in the form of the huge defense budget increases requested by the administration.

Operation Exodus, however, has not been without its problems. Most notable are delays that are caused when items have been detained or seized. Our exporters, like any businessman, are expected to deliver the goods they promised at the time they promised. Failure to do so damages their reputation as a reliable supplier and could easily prevent them from acquiring new contracts. These kind of problems are not only damaging to individual firms, but to the extent that it is a nationwide problem it inhibits the creation of new jobs, and diminishes the export-related revenues that flow into the Treasury.

And the importance of exports to our economy is growing daily. No one knows that more than we from Florida. Foreign trade is the fastest growing segment of Florida's economy with a value of goods exported in 1982 totaling more than $11 billion. Last year, Florida's exports exceeded imports by 50 percent, and trade-related employment rose at a rate 5 times that of the United States as a whole. Only 5 years ago Florida did not have any foreign trade zones, now we are tied with New York as the leading free trade zone State in the country. And the Miami zone, established only 3 years ago, is now the busiest of the general purpose zones. Florida

has over 100 institutions involved in international banking, a critical ingredient for a successful exporting industry. In 1982, Florida again tied New York for the State with the largest number of Edge Act banks, at 33 apiece, and is soon expected to move into the lead. In short, exports are an increasingly important part of our national and State economies.

This, I believe, requires us to work for a careful balance between our national security needs to restrict the flow of critical U.S. technology to the Soviet military, and our economic security needs to promote exports and export-related jobs. I am pleased that we have such distinguished witnesses with us here today, and I know that they will be able to supply us with the information necessary to enable us to make these important decisions.

The CHAIRMAN. And now, Senator Nunn.

STATEMENT OF SAM NUNN, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator NUNN. Mr. Chairman, thank you very much.

If you have questions for the witness, it might be a bit less disruptive, with the Chair's permission, to just be seated here; OK?

The CHAIRMAN. That's just fine.

Senator NUNN. Mr. Chairman, Senator Proxmire, members of the committee, I am pleased to testify before this committee on the issue of technology transfer and how the Federal Government can improve its ability to control illegal exports.

As a former chairman of the Senate Permanent Subcommittee on Investigations and now its ranking minority member, I have had considerable exposure to technology transfer issues. And I'm honored to share with you and the committee some of my views.

With regard to the proposed Office of Strategic Trade, I support the measure, am a cosponsor of it with Chairman Garn, and believe it would improve significantly the ability of this Nation to achieve a trade policy that is fair to American business and yet cognizant of national security considerations as they are affected by high-technology exports.

CREATING THE OFFICE OF STRATEGIC TRADE

The Office of Strategic Trade would replace the Office of Export Administration in the Commerce Department by amending the Export Administration Act of 1979.

If this bill or some similar bill does become law and a new agency is set up, I would strongly recommend, Mr. Chairman, that the Customs Service enforce export controls under the statute in an arrangement similar to the one currently in place between the Department of State and the Customs Service regarding the Arms Export Control Act.

Under this arrangement, the State Department administers the law, but the enforcement function is handled by the Customs Service.

Should the OST proposal not pass this year, the Congress will be faced with the expiration of the Export Administration Act.

In that event, the enforcement functions, in my view, should be removed from Commerce and given to Customs.

I have introduced this week—as a matter of fact, yesterday—legislation to carry out this and other purposes.

The CHAIRMAN. May I interrupt the Senator there to say that I think this is an extremely good proposal which I could certainly support and incorporate in my bill. I think it's an excellent suggestion.

Customs has the background and expertise and the mandate to enforce. And I think it's a good suggestion.

Senator NUNN. Thank you very much, Mr. Chairman.

And I will try to develop the reasoning behind that suggestion as I proceed in the testimony.

In 1980, the Investigation Subcommittee began a preliminary inquiry into the effectiveness of the executive branch in enforcing export controls. Public hearings were held in May of 1982, wherein some 26 witnesses testified, 38 exhibits were received, and the printed record contained more than 600 pages.

SUBSIDIZING OUR ADVERSARY

Our subcommittee investigation revealed why it is so important that the United States do a better job of controlling the export of our Nation's high technology. We need improved export controls because the Soviet Union and its satellites have obtained American and Western technical knowhow and have made enormous gains, based on that knowhow, in armed strength.

Using American technology, the Soviets have improved their military capabilities in microelectronics, laser, radar, precision manufacturing, and other technologies. The United States finds itself in the unenviable and costly position of financing its own adversary—in many high-tech areas, we're competing, in effect, with ourselves technologically and financially.

The American defense budget is high enough. We certainly can't afford, in addition, to subsidize Soviet military costs as well.

The subcommittee wanted to know how serious is the U.S.S.R.'s effort to acquire Western technology. The answer was provided us by the Central Intelligence Agency. In a comprehensive survey, the first of its kind, and received as exhibit No. 1 at our hearings, the CIA described the Soviet's campaign to obtain U.S. technology as being massive, well planned, and well managed, a national program, approved at the highest levels of the Kremlin.

Having established that the technology drain was a serious military and financial problem, the subcommittee then went into detail as to how we might do a better job of controlling it.

Our principal finding was that the U.S. Government's intelligence-gathering and evalutating components should assume a more assertive role in anticipating the Soviet Union's campaign to acquire high technology from the United States and its major trading partners.

Through improved intelligence, the Government can determine, better than it is now doing, what it is the Soviets need and want and then model our response accordingly.

Our subcommittee believes that American business and industry should have the opportunity to export, with as few regulations and

controls as possible. Our current high-technology export controls now require too many items to be controlled.

I don't think our major problem is not controlling enough. I think our major problem is controlling—trying to control so much that we don't control anything very well.

Because the Government contrives to control too many items, it fails to keep track of those high-technology products the Soviets desire most.

An improved system of export regulation should focus on those high-technology items the Soviets must have.

Another important lesson that the investigation taught was that the Soviets are rather specific when they set out to obtain U.S. and Western technology in most instances—certainly not in all, but in most. But they know exactly what they want to obtain.

There is a notion—I think it is a mistaken one—that the Soviets send spies and surrogates to the United States to buy up, helter skelter, any highly developed technical commodity that they can lay their hands on. They may do some of this, but I think, if anything, it's a diversionary tactic. In many instances, the Soviets know exactly what technology they want, right down to the model number.

In fact, the American engineer who was compromised by Polish agents by selling them radar technology to be used in the Stealth and B-1 bombers told our subcommittee that the agents who bribed him asked for specific documents and operating manuals, as if they were ordering from a Sears & Roebuck catalog.

A dramatic manifestation of specific long-term Soviet strategy to obtain technology was their successful effort to equip a semiconductor manufacturing and testing plant with American machinery. Beginning in the early 1970's, this Soviet effort went forward for 6 or 7 years, until 1980, when U.S. law enforcement authorities discovered it and then immobilized the syndicate that had been arranging the illegal exports, most of which originated in southern California.

The capacity to manufacture and test highly sophisticated semiconductor equipment gives the Soviets the opportunity to compete on an equal footing with the West in designing and building more flexible, more capable, and more reliable military and electronic systems.

In a 3-year period from 1977 to 1980, more than $10 million in American-made, high-technology equipment was shipped to the Soviet Union. Much of the machinery was used to equip the semiconductor facility.

I would add, Mr. Chairman, that the $10 million price tag, while large, pales in comparison to the amount of rubles the Soviets saved by obtaining a finished perfected technology.

In any R&D effort—and I know you know much more about R&D efforts than I do, Mr. Chairman, but you know there are big startup costs incurred when mistakes are made, when untested theories and premises are proven wrong, forcing engineers to go back to the drawing boards. That's why R&D projects can be so costly. But the Soviets can avoid such expenses in this case, because they bought a proven product.

Our Government must do a better job of narrowing the list of protected items while increasing the control of those items that are targeted.

In 1982, a General Accounting Office study concluded that American industry is required to obtain export licenses for many more products than is necessary to protect national security. In fiscal year 1981, for example, nearly 65,000 export applications were processed, but only 1 out of every 17 was examined carefully by the Government, according to GAO.

GAO went on to say that about half of the export license applications received each year could be eliminated without affecting national security.

GAO also said some products now exempt from license requirements should require approval before export. With improved intelligence the decision to control a specific item can be based on timely and factual considerations, such as the Soviets' current need for such technology, their previous efforts to obtain it, the current level of their own version of the technology and its availability to foreign nations.

These are the kind of facts that sound intelligence and sound analysis—and I emphasize the latter is just as important as intelligence—can provide. Such information also translates into important investigative leads.

Along with an enhanced intelligence capability must come an equally improved system for sanitizing the data so it can be disseminated to agents whose security clearances frequently are not as comprehensive as those of intelligence specialists. This has been a very significant internal problem.

Referring again to the major semiconductor technology diversion, our staff could find no evidence indicating that this criminal syndicate's activities had ever been subjected to aggressive analysis by intelligence experts. Should the Office of Strategic Trade be established, it should be encouraged to work in close cooperation with the Central Intelligence Agency and other intelligence entities.

Equally important, there should be within OST the manpower resources and determination to see that important lessons gained from intelligence information be passed on to the investigating agents in the field who consider themselves, and who are, properly trained and who enjoy the confidence and trust of their peers in the Federal law enforcement community.

In its investigation of the Commerce Department's effectiveness in enforcing the Export Administration Act, the subcommittee examined the routine operations and procedures of the Department's enforcement component, known as the Compliance Division, and located within the Office of Export Administration.

The Compliance Division was founded by our staff and agreed to by the joint subcommittee members to be an understaffed, poorly equipped, and in certain instances undertrained and underqualified investigative unit. One Compliance Division agent, an investigator, who unlike several of his colleagues, did have extensive law enforcement experience and training, told the subcommittee staff the unit was "totally ineffective" in preventing the export of controlled dual use technology to the Soviet bloc.

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He said the Kremlin's spy organization, the KGB, could not have organized the Compliance Division in a way more beneficial to Soviet interests. The agent's view was not contradicted by persons in the law enforcement and national security fields.

LACK OF HARMONY BETWEEN AGENCIES

The subcommittee noted a lack of harmony between the Compliance Division and the Customs Service. The result was that effective enforcement was diminished. Part of the tension stems from the Commerce Department's strict interpretation of the proprietary information provision in the Export Administration Act.

Customs agents complained that they were being denied information they needed to carry out investigations of export violations. Tension was also created by the Customs agents' sense that the Compliance Division's inexperienced personnel were involving themselves in Customs' foreign work, risking the compromise of ongoing cases, causing confusion and uncertainty among foreign officials, and having a negative impact on national security.

In November 1982, some 6 months after the subcommittee's May hearings, I wrote to the Commerce Department and the Customs Service to ask them to update us on progress that had been made in achieving improved enforcement of export controls.

Their responses, which we will make available to Mr. Chairman and your staff for the record, reveal that disagreements and insufficient coordination still existed between Customs and Commerce. The Commerce Department and the Customs Service are still disagreeing on fundamental considerations as to how export laws should be enforced and alleged violations investigated.

Commerce is now strengthening its enforcement capability, no doubt about that, and you will hear testimony about that. In terms of manpower and resources, Commerce now perceives itself to be the equal of Customs in most respects.

The seeds of a fierce interagency competitive encounter are now being sown.

One of the more serious aspects of this rivalry could surface overseas to the embarrassment of the United States.

The Commerce Department believes that it has jurisdiction to investigate export control cases in foreign nations. Foreign inquiry by the U.S. law enforcement personnel is a most delicate and sensitive undertaking, as the Foreign Relations Committee has noted on numerous occasions.

It must be conducted according to established procedures in close and harmonious conjunction with the host country. It concerns me that in the future the Commerce Department will be sending its agents abroad to initiate such exercises.

Traditionally, the U.S. Customs Service has had this reponsibility in smuggling cases and in export investigations. Before this tradition is altered beyond repair, Congress as well as the Department of State and other affected agencies should give the subject hard scrutiny.

I have written to Secretary of State George Shultz on this, and I am certain he will also reply to this committee's inquiries. I think

the Foreign Relations Committee should also take a look at this. I sent Senator Percy a copy of the letters.

The Commerce Department intends to be the principal and preeminent entity for enforcement of the Export Administration Act in the United States and abroad.

In fairness, Mr. Chairman, and in acknowledgement of what the Commerce Department is doing, I think it must be acknowledged that the Commerce Department is trying to improve its enforcement capabilities. In light of the changes that the Commerce Department has made in its ability to investigate reported violations of the statute, it is logical to assume that over the next months, at least certainly over the next 6 months to 1 year, that Commerce will develop and will be able to take legitimate credit for some important diversion cases.

Similarly, Customs, through its Operation Exodus, will continue to develop and take credit for its own diversion cases, big and small.

Both Commerce and Customs are to be commended for their successes, but still remaining and still hampering the Nation's interest in export controls is the basic government operations weakness of having two competing agencies assigned the same task.

It is likely, in fact, that a strong enforcement arm at Commerce will aggravate the competition between the two agencies and make it all the more difficult for the executive branch to fashion a smooth-functioning, well-coordinated export control system and achieve a method of export controls that blends in harmoniously with an improved trade policy, a policy fair to business and industry, while recognizing the need to regulate certain high technology exports for national security purposes.

Achieving such a balanced trade policy will be a difficult, demanding challenge, and we in Congress should make it abundantly clear to the executive branch that interagency jealousies and infighting over turf simply will not be tolerated.

ENFORCEMENT OF EXPORT LAWS

Customs is a law enforcement agency with longstanding jurisdiction and experience in detecting, investigating, and apprehending criminal violators of Federal laws. The Commerce Department's experience and tradition in law enforcement are, at best, limited and recently claimed.

I believe there is no question which agency should be directed to carry out enforcement of export laws. Whether it is within a new Office of Strategic Trade or under an amended Export Administration Act, the responsibility to investigate violations of the law should rest with the Customs Service.

Two solutions are available to the export law enforcement problem. Immediate relief could be found if the enforcement function of the Commerce Department were abolished and all its responsibilities placed in the U.S. Customs Service.

I am not talking about licensing. I am talking about enforcement. This would insure that competent professional agents, trained in formal traditional law enforcement procedures, would be

assigned to investigate alleged violations of the Export Administration Act.

As mentioned at the outset of this week, I introduced legislation which contains that proposal and others. In terms of longer range considerations, Congress should carefully consider, Mr. Chairman, the proposal you made to create an independent Office of Strategic Trade that would take the Export Administration Act mechanism from Commerce, including the enforcement function.

I have already expressed my support for this proposal, and I am pleased to join as a cosponsor. I am at the same time taking other steps to improve the Government's ability to enforce export controls.

And, Mr. Chairman, while it is not directly on point, if I might be given about 3 or 4 or 5 more minutes, I would like to share with you some of these other items, because we are really going to need the help of this committee and people who are very knowledgeable in this area.

PROPOSALS

First, an amendment to the Export Administration Act of 1979 to make it a crime to possess or attempt to possess restricted technology and goods with an intent to export such goods.

The current law thwarts effective law enforcement by forcing law enforcement officers to wait until the technology actually crosses the border. So this is a very strong impediment to effective law enforcement.

Second, an expansion of the enforcement tools currently available to the U.S. Customs Service. The bill I have introduced gives customs officers express statutory authority for warrantless arrest and search and seizure upon reasonable cause in case of outbound cargo and persons.

This new power is equivalent to that authority which customs now possesses in case of inbound cargo and persons, and I might say that some courts have already implied that they have that power. But this would clarify it without any doubt.

Third, a requirement for heightened cooperation between all Government agencies exercising any authority under the export statutes to prevent any accidental export of unlicensed goods or technology due to oversight.

Fourth, amendment of the Federal racketeering statutes to expose the unlawful export of high technology, subject to increased prison sentences and civil penalties; namely, having this a crime that would be involved in continuing criminal enterprises where it is applicable.

Fifth, amendment of the electronics surveillance statutes to permit court-order surveillance where there is probable cause to believe that a violation of the technology export laws is being committed.

Sixth, a call to the President to initiate negotiations with our allies to prosecute or extradite individuals who have been indicted in the United States for technology transfer violations, but have avoided prosecution by fleeing our country.

Mr. Chairman, members of the committee, we had one of the more notorious cases involving violation of our laws; in fact, people working directly with the Soviet Union. They were convicted here but fled the jurisdiction and are now in one of our chief NATO allies, Germany, and it is a bit ironic that we don't have any extradition statutes in crimes that directly weaken the NATO Alliance.

I am not in any way casting blame on our allies for this. I think it is up to the State Department to vigorously pursue this in negotiations with our allies. Until they do I don't think we are going to reach a solution to this.

Seventh, I urge the President to develop an improved system of export responsibilities and procedures which focus on those high technology items the Soviets must have, and I have already made reference to this.

Eighth, the creation of a new federal criminal offense in the area of high technology. The proposed legislation would make it a criminal offense to steal technology with the intent to unlawfully export it, to engage in commercial bribery, to secure technology with the intent to unlawfully export it, to receive or purchase technology with the intent to unlawfully export or to use interstate commerce to commit any of the above.

The penalties would be 5 years and a $50,000 fine, but if to a Communist nation the penalty would be 10 years and a $100,000 fine.

Ninth, one that may stir up a little controversy, but I am prepared to defend it, amendment of the Freedom of Information Act to limit requests for information from our Government to American citizens and those who are lawfully entitled by the immigration laws to be in this country as opposed to foreign nationals.

Not many people recognize it, but if Qadhafi or the Ayatollah or Andropov filed a freedom of information request now, they are entitled to that information, and I don't really believe that was the purpose of our original laws. Let the critics scream, but I am going to pursue this, and I hope we can get this passed.

I really believe the American people would be amazed if they realized the extent of that statute.

Each of these proposals are based on evidence produced and recommendations made during the course of our May hearings. Those proposals speak to specific problems which have all too often interfered with our ability to enforce our export laws.

Mr. Chairman, I apologize to you for the length of time, but I have to say to you this is my short version. The long version I would hope you would admit to the record.

The CHAIRMAN. It certainly will be admitted to the record.

[The complete statement follows:]

STATEMENT OF SENATOR SAM NUNN

BEFORE THE

SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

FEBRUARY 3, 1983

Mr. Chairman, I am pleased to testify before the Committee on Banking, Housing and Urban Affairs on the issue of technology transfer and how the federal government can improve its ability to control illegal exports and critical technology losses.

As a former Chairman of the Senate Permanent Subcommittee on Investigations and now its Ranking Minority Member, I have had considerable exposure to technology transfer issues and I would like to share with you and the Committee my views.

With regard to the proposed Office of Strategic Trade, I support the measure, am a cosponsor of it with Chairman Garn and believe it would improve significantly the ability of this nation to achieve a trade policy that is fair to American business and yet cognizant of national security considerations as they are affected by high technology exports.

The Office of Strategic Trade would replace the Office of Export Administration in the Commerce Department by amending the Export Administration Act of 1979. If OST becomes law and a new agency is set up, I would recommend that the Customs Service enforce the statute in an arrangement similar to the one currently in place between the Department of State and the Customs Service regarding the Arms Export Control Act. Under this arrangement, the State Department administers the law but the enforcement function is handled by the Customs Service. Should the OST proposal not pass this year, the Congress will be faced with the expiration of the Export Administration Act. In that event, the enforcement function should be removed from Commerce and given to Customs. I have this week introduced legislation to do so.

Record Of The Investigations Subcommittee In Technology Transfer Field

In 1980, as Chairman of the Investigations Subcommittee, I directed the staff to conduct a preliminary inquiry into the effectiveness of the executive branch in enforcing export controls.

In January of 1981, with the change in Senate leadership, I became Ranking Minority Member of the Subcommittee and had the Minority staff continue the export controls investigation.

With the concurrence of Chairman Roth, public hearings were held on technology transfer in May of 1982. In the five days of hearings, 26 witnesses testified and 38 exhibits were received in a printed hearing record of more than 600 pages.

The investigation and hearings were held under authority of Senate Resolution 361 of March 5, 1980 and 333 of March 4, 1982 in which the Permanent Subcommittee on Investigations of the Governmental Affairs Committee was authorized to examine the efficiency and economy of government operations, including those functions affecting national security.

Mr. Chairman, I have copies of the hearing volume, "Transfer of United States High Technology To The Soviet Union And Soviet Bloc Nations," May 4, 5, 6, 11 and 12, 1982; and the Subcommittee's report of the same title, issued November 15, 1982. I request that these two documents be received as exhibits to your hearings.

From the beginning of the preliminary inquiry until the filing of the report, we received complete cooperation and vital assistance from the Senate Intelligence Committee under its Chairman, Senator Goldwater, and the Ranking Minority Member, Senator Moynihan.

We also are grateful to Senator Jackson, who, as Chairman of the Investigations Subcommittee in the mid-70s, was one of the first Members of Congress to identify the problem of technology diversion and who did considerable pioneering investigative work in this field.

American National Security Is Undermined By Inadequate U. S. Export Controls On High Technology Machinery And Software

Our Subcommittee investigation revealed, in terms all Americans can understand, why it is so important that the United States do a better job of controlling the export of our nation's high technology. We need improved export controls because the Soviet Union and its satellites have obtained American and Western technical know-how to make enormous gains in armed strength. Using American technology, the Soviets have improved their military capabilities in micro-electronics, laser, radar, precision manufacturing and

other technologies. In addition, U. S. technology has given the Soviet Union the opportunity to analyze American military systems and determine how to immobilize them. For example, how productive is it for this nation to spend millions of dollars on development of highly sophisticated radar equipment for use in the Stealth and B-1 bombers and other weapons systems, only to have this secret technology leaked to Polish spies, who most certainly turned it over to the Soviets? Such a radar technology drain did occur. In this case, as in many others, the U. S. finds itself in the unenviable and costly position of financing its own adversary. We are competing with ourselves -- technologically and financially. The American defense budget is high enough. We cannot afford to subsidize Soviet military costs too.

The Subcommittee wanted to know how serious is the USSR's effort to acquire Western technology. The answer was provided us by the Central Intelligence Agency. In a comprehensive survey, the first of its kind and received as Exhibit No. 1 at our hearings, the CIA described the Soviets' campaign to obtain U. S. technology as being massive, well planned and well managed -- a national program approved at the highest levels of the Kremlin. The CIA survey concluded:

> Stopping the Soviets' extensive acquisition of military-related Western technology -- in ways that are both effective and appropriate in our open society -- is one of the most complex and urgent issues facing the Free World today.

Improved U. S. Intelligence Effort Would Strengthen Ability To Enforce Export Controls And Create Less Redtape For American Business

Having established that the technology drain was a serious military and financial problem, the Subcommittee then addressed the issue of how to control it. We examined the problem from the point of view of enforcement. We asked two basic questions -- Are the U. S. export enforcement mechanisms efficient? And are they based on the best information available? Unfortunately, the answer was no to both questions. I will discuss the intelligence question first.

The principal finding of the Subcommittee's November 1982 report was that the U. S. government's intelligence gathering and evaluating components should assume a more assertive role in anticipating the Soviet Union's campaign to acquire high technology from the U. S. and its major trading

partners. It was the Subcommittee's view that through improved intelligence the government could determine what it is the Soviets need and want and then model its response accordingly. In sum, we must diagnose more precisely the nature of current Soviet needs for our technology.

A primary consideration of our Subcommittee's investigation was our belief that American business and industry should have the opportunity to export with as few regulations and controls as possible. One point came through clearly in our inquiry. Our current high technology export controls now require too many items to be controlled. Because the government tries to control too many items it fails to keep track of those high technology products the Soviets desire most. An improved system of export regulation should focus on those high technology items the Soviets must have.

The so-called Soviet shopping list, compiled from sound intelligence estimates, will enable this government to safefuard the most critical aspects of our technolgy and also eliminate some of the regulations and controls that cause American businessmen to complain bitterly about wasteful government redtape. The operative term here is "sound intelligence estimates." Improved intelligence is essential if we are to progress.

I was pleased to note the reference in the May hearings to the formation of the Technology Transfer Intelligence Committee. Clearly, the intelligence community has started in the right direction. We must ensure that they continue in the proper direction and that they receive the necessary support. We must also ensure that the consumer of this intelligence pay proper attention to it.

Soviet Union Knows Precisely The U. S. Technology It Wants To Obtain And Does Not Waste Resources On Random Purchases

One of the most important lessons the investigation and hearings taught us was that the Soviets are calculating and specific when they set out to obtain U. S. and Western technology. In most instances, they know exactly what they want to obtain. There is a notion -- a mistaken one, I believe -- that the Soviets send spies and surrogates to the U. S. to obtain, helter skelter, any highly developed technical commodity they can lay their hands on. The evidence at our hearings suggested just the opposite was true; that is to say, the Soviets do not need, and do not want to expend their few dollar

reserves on, random purchases of American high technology. To assume they do is to demean the unprecedented strides forward the Soviets have made since the war in science and engineering. In many instances, the Soviets know exactly what technology they want, right down to the model number. In fact, the American engineer who was compromised by Polish agents by selling them radar technology to be used in the Stealth and B-1 bombers told our Subcommittee that the agents who bribed him asked for specific documents and operating manuals, as if they were ordering from a Sears, Roebuck catalogue.

A dramatic manifestation of specific, long term Soviet strategy to obtain technology was their successful effort to equip a semi-conductor manufacturing and testing plant with American machinery. Beginning in the early 1970s, this Soviet effort went forward for six or seven years until 1980 when U. S. law enforcement authorities discovered, and then immobilized, the syndicate that had been arranging the illegal exports, most of which originated in Southern California.

Described by leading scientists as the very best semi-conductor manufacture and test equipment money could buy, the American machinery obtained in this six-year acquisition effort enabled the Soviets to improve by a quantum jump their military electronics capability.

The capacity to manufacture and test highly sophisticated semi-conductor equipment gives the Soviets the opportunity to compete on an equal footing with the West in designing and building more flexible, more capable and more reliable military electronic systems.

The methods the Soviets used to obtain the semi-conductor technology were simple enough. They had their surrogates establish a series of electronics brokering firms in Southern California. Using false end use certification and bogus shipping documentation, the Soviets' syndicate arranged for the purchase of the machinery and then exported it to Moscow, using Western European cities such as Vienna and Dusseldorf as transshipment points.

In a three-year period from 1977 to 1980, the California-Western Europe combine shipped more than $10 million in American-made high technology equipment to the Soviet Union. Much of the machinery was used to equip the semi-conductor facility. I would add, Mr. Chairman, that the $10 million price tag, while large, pales in comparison to the amount of rubles the

Soviets saved by obtaining a finished, perfected technology. In any R & D effort, there are big start-up costs, costs incurred when honest mistakes are made, when untested theories and premises are proven wrong, forcing engineers to go back to their drawing boards. That is why R & D projects can be so costly. But the Soviets could avoid such expenses. What they bought was proven product.

U. S. Intelligence Community Did Not Give Technology Transfer Issues Sufficiently High Priority

It was acknowledged at our Subcommittee hearing that technology transfer had not been given sufficient attention by the intelligence community. "The whole question of technology transfer had not been a priority topic," said Admiral Bobby Inman, then Deputy Director of the CIA. It is encouraging to note that in recent months there has been improvement in the intelligence community's emphasis in this important area.

While American resources have been devoted to encountering the Soviets in other areas, the USSR increased its technological acquisition projects. Dr. Jack Vorona, Assistant Director of Scientific Intelligence in the Defense Intelligence Agency, testified that the Soviet Union is devoting more resources than ever before to the task of obtaining and exploiting American technical expertise and equipment. Dr. Vorona said Soviet military uses of American know-how far outweigh civilian applications. So dominant a role does American technology play in the Soviets' military and industrial scheme that they have come to think of U. S. research and development programs as their own.

We must realize that technology transfer acquisition by the Eastern European countries is, in effect, acquisition by the USSR. A policy of trade differentials in the Soviet Bloc may have foreign policy relevance but, when extended to critical technologies, directly assists the growth of Soviet military capabilities.

Diversion Investigation Revealed How Improved Intelligence Can Lead To Effective Strategy For Blunting Soviet Acquisition Drive

Our government must do a better job of narrowing the list of protected items while increasing the control of these items. A smaller number of controlled items would be less difficult for the government to keep track of.

Some critics, in fact, insist that the objective is impossible to achieve because there is far too much technology to control and too few government personnel to carry out the mission. These critics agree with a computer business executive who testified that modern technology is too easily smuggled and too readily available throughout the world for the U. S. to try to keep certain items out of the reach of the Soviet Union. However, even this businessman conceded that in a smaller universe, with fewer items to control, a previously unmanageable problem becomes manageable. But the obvious question is, "Can the number of items be reduced while national security interests are still protected?"

To that question, I would first cite a General Accounting Office study. Requested by Chairman Garn and Senator Harry Byrd, the GAO report concluded that American industry is required to obtain export licenses for many more products than is necessary to protect national security. In fiscal year 1981, for example, nearly 65,000 export applications were processed but only one of every 17 was examined carefully by the government. "The licensing system," GAO said, "is more a paper exercise than a control mechanism." In the May 26, 1982 report, "Export Regulation Could Be Reduced Without Affecting National Security," GAO went on to say that about half the export license applications received each year could be eliminated without affecting national security. In addition, GAO said, there is a good possibility that license requirements could be reduced even further regarding exports to close U. S. allies. I request the GAO report be received as an exhibit.

Conversely, GAO said, some products now exempt from license requirements should require approval before export, which leads to a second response to the national security issue. With improved intelligence, the decision to control a specific item can be based on timely and factual considerations such as the Soviets' current need for such technology, their previous efforts to obtain it, the current level of their own version of the technology and its availability in foreign nations.

These are the kinds of facts sound intelligence analysis can provide. Such information also translates into important investigative leads. For example, using the Soviets' successful six-year effort to equip their semi-conductor facility with American machinery, that investigation revelaed considerable information not only about the how the USSR uses business

intermediaries to obtain controlled technology. This case also revealed, in a very specific sense, that the Soviets may have to continue for some time into the future to rely on U.S.-made semi-conductor manufacture and test equipment spare parts to service the machinery they purchased from us originally. Knowing that, U. S. intelligence and enforcement specialists should be able to predict with some accuracy where the Soviets will send their buyers. Dr. Lara Baker, an internationally known computer scientist with experience in intelligence and military affairs, told our Subcommittee that one critical item in the semi-conductor technology package the Soviets acquired had a short "half-life;" that is, its components wore out quickly and predictably. Moreover, there were only three or four firms in the world which could provide the critical spare parts. That kind of information could be of value to agents in the field whose responsibilities are to enforce export controls and investigate diversions. That is the kind of application of improved intelligence that the Subcommittee had in mind in calling for stepped up intelligence gathering and evaluation in the technology transfer field.

Once Improved Intelligence Effort Is In Place, It Must Be Accompanied By Enhanced System For Dissemination Of Sanitized Data To Agents In The Field

Along with an enhanced intelligence capability must come an equally improved system for sanitizing the data so that it can be disseminated to agents whose security clearances frequently are not as comprehensive as are those of intelligence specialists. Referring again to the major semi-conductor technology diversion, our staff could find no evidence indicating that this criminal syndicate's activities had ever been subjected to aggressive analysis by intelligence experts. In addition, testimony at our hearings indicated that the Commerce Department, the main agency with the duty to enforce the Export Administration Act, had severely limited capability to develop, receive, evaluate and act upon intelligence information on major diversion investigations.

Should the Office of Strategic Trade be established, it should be encouraged to work in close cooperation with the Central Intelligence Agency, particularly its Technology Transfer Intelligence Committee, and other intelligence entities. Equally important, there should be within OST the manpower and resources, and the determination, to see that important lessons

gained from intelligence information be passed on to investigating agents in the field who themselves are properly trained and who enjoy the confidence and trust of their peers in the federal law enforcement community.

Subcommittee Inquiry Raised Disturbing Questions About Effectiveness Of Commerce Department Enforcement Function

In its investigation of the Commerce Department's effectiveness in enforcing the Export Administration Act, the Subcommittee made a close and detailed examination of the routine operations and procedures of the Department's enforcement component, known as the Compliance Division and located within the Office of Export Administration. What we found was not encouraging.

The Compliance Division was found to be an understaffed, poorly equipped and, in certain instances, undertrained and unqualified investigative unit. Its investigators numbered eight to 11 agents; its inspectors totaled five or six; and its intelligence section had three to five analysts. There were no requirements relating to the training and experience of personnel. Some agents were trained because of previous law enforcement work. Other agents were not formally trained. Agents were not authorized to make arrests, search and seize questionable exports, or carry firearms. Paradoxically, they did undertake traditional law enforcement exercises such as surveillances of suspected violators, but, in these exercises, operations were directed by inadequately trained supervisors. Complicating the Compliance Division's many other problems was the existence of a large and growing backlog of uninvestigated leads.

One Compliance Division agent, an investigator, who, unlike several of his colleagues, did have extensive law enforcement experience and training, told the Subcommittee staff the unit was "totally ineffective" in preventing the export of controlled dual-use technology to the Soviet bloc. He said the Kremlin's spy organization, the KGB, could not have organized the Compliance Division in a way more beneficial to Soviet interests. This agent's view was not contradicted by persons in the law enforcement and national security fields.

It was the finding of the Minority staff of the Subcommittee that for several years the Commerce Department had overstated the effectiveness of the

Compliance Division. In addition, the staff added, the Commerce Department has as its major focus the promotion of trade and is not comforatable with the task of limiting the sale of anything. In this finding, the staff cited a similar conclusion reached by you, Mr. Chairman, who, in introducing legislation to create the Office of Strategic Trde, had referred to the "export promotion bias" of the Department as making it unfit to enforce export controls.

Mr. Chairman, I would like to quote directly from the Minority staff presentation with regard to the Commerce Department's ability to enforce export controls.

> It is the finding of the Minority staff that the national security implications of the Export Administratin Act are too important to be entrusted any longer to the Commerce Department as presently organized.
>
> For three decades the enforcement function has resided in the Commerce Department -- through Administrations controlled by Democrats and Republicans. Three decades is sufficient time to allow reasonably capable officials to perfect the most challenging task. But serious procedural and operational problems still exist in the Compliance Division of Comerce. We find the conclusion inescapable, therefore, that effective enforcement of the Export Administration Act is beyond the institutional capabilities of the Commerce Department. Moreover, from a government operations and executive organizational standpoint, the mere existence of the Compliance Division is an impediment to efficient and effective enforcement of the Act. Understaffed, flagrantly short of resources, the Division cannot do the job effectively; but, by its presence, prevents other components of government from taking on the task.

Lack Of Cooperation And Coordination Was Found Between Commerce Department And Customs Service, Adversely Affecting Enforcement

The Subcommittee noted a lack of harmony between the Compliance Division and the Customs Service. The result was that effective enforcement was diminished. Part of the tension stemmed from the Commerce Department's strict interpretation of the proprietary information provision in the Export Administration Act. Customs agents complained that they were being denied information they needed to carry out investigations of export violations. Tension also was caused by Customs agents' sense that the Compliance Division's inexperienced personnel were involving themselves in Customs' foreign work, risking the compromise of on-going cases, causing confusion and

uncertainty among foreign officials and having a negative impact on national security.

With regard to the foreign investigation issue, the Subcommittee obtained a copy of a memorandum of October 30, 1980 from William Green, Deputy Assistant Commissioner in the Customs Service Office of Border Operations, to Robert L. Keuch, Associate Deputy Attorney General and Chairman of the Inter-Agency Working Group on Export Control. Mr. Chairman, I have a copy of that memorandum and request it be received as an exhibit to these hearings.

In the memorandum, Mr. Green said the Commerce Department's practice of engaging in overseas investigations threatened to compromise informants of Customs and foreign law enforcement agencies. Mr. Green said continued investigative conduct by the Commerce Department's agents in foreign countries could damage the longtime and close relationship Customs enjoyed with its foreign counterparts and could adversely affect U. S. national security.

Customs And Commerce Department Responses Indicate Enforcement Problems Still Exist, Particularly Foreign Investigations

In November of 1982, some six months after the Subcommittee's May hearings, I wrote to the Commerce Department and the Customs Service to ask them to evaluate, in separate written replies, progress that had been made in achieving improved enforcement of export controls and improved coordination and cooperation between the two agencies.

William von Raab, Commissioner of Customs, replied on December 16, 1982. Lawrence J. Brady, Assistant Secretary of Commerce for International Trade, wrote back on December 22, 1982. Mr. Chairman, I have copies of their letters and attachments. I request they be received as exhibits.

The Brady and von Raab responses, accompanied by a series of letters between the affected agencies, revealed that disagreements and insufficient coordination still existed between Customs and Commerce. The Commerce Department and the Customs Service are still disagreeing on fundamental considerations as to how export laws should be enforced and alleged violations investigated. Commerce is now strengthening its enforcement capability, and in terms of manpower and resources, now perceives itself to be the equal of Customs in most respects. The seeds of a fierce interagency competitive encounter are being sown.

One of the more serious aspects of this rivalry could surface overseas to the embarrassment of the United States. The Commerce Department believes that it has jurisdiction to investigate export control cases in foreign nations.

So there is no misunderstanding of what Commerce Department policy is regarding foreign investigations, I would like the hearing record to reflect Mr. Brady's language on this issue. In his letter to me, he said:

> One major issue remains to be resolved regarding the conduct of the overseas phases of export control investigations. In general, Commerce does not share the view that Customs should conduct all overseas investigations of Export Administration Act violations to the exclusions of Commerce. It is Commerce's position that effective enforcement of the Act requires that Commerce be involved actively in the overseas phases of investigations, as well as in their domestic phases. The basis for this position is as follows:
>
> --The majority of export enforcement cases has international as well as domestic components. Attempts to separate the jurisdiction over the foreign phases of export control investigations from jurisdiction over the domestic phases of such investigations would adversely affect the U. S. Government's overall ability to enforce the Export Administration Act and the regulations thereunder.
>
> --Many serious cases of diversion or reexport involve parties abroad who are beyond the reach of the U. S. criminal process. Often, illegal diversions or reexports do not involve a culpable U. S. party or unlawful exportation from the United States. Moreover, a violation of the Export Aministration Act is not an extraditable offense under treaty with any sovereign power.
>
> --A potent sanction available to our government in such situations is the Commerce administrative denial of export privileges. The Department of Commerce has the greater experience in conducting overseas investigations for the purpose of enforcing these administrative export denial orders.
>
> --The overseas phases of export control investigation frequently involve government-to-government exchanges are are perceived by the involved foreign governments to have a high political content. Historically, foreign governments have often expressed their preference to deal with these matters through diplomatic channels or on a policy level. Further, cases involving illegal diversion and/or reexport by overseas violators often impact U. S. trade and licensing policies, and require sensitive handling by Commerce.
>
> The Departments of Commerce and State already have in place extensive structures to conduct these exchanges in the manner preferred by our

foreign policy counterparts. The Foreign Service-Foreign Commerical Service (FS-FCS) structure provides vital support in this and other areas of export control enforcement, such as the conduct of pre-license and post-shipment checks, and the Commerce collection of export control enforcement-related intelligence gleaned from overseas business contacts.

--With respect to investigations, the FS-FCS apparatus is worldwide in scope and provides a greater variety of investigative approaches to meet particular circumstances. The assistance of U. S. Customs Attaches complements this structure in pursuing particular leads or investigations, in providing support whenever contact with a foreign customs service is appropriate, and in coordinating joint Commerce/Customs investigations.

Within this context, Customs should advise Commerce of the progress of its overseas as well as domestic investigations of potential or actual violations of the Export Administration Act or the regulations thereunder. Such an exchange of information would preclude Commerce's inadvertent issuance of export licenses to parties either suspected of being potential violators or under investigation by Customs. This will ensure more effective enforcement of export controls worldwide.

Foreign inquiry by U. S. law enforcement personnel is one of the most delicate and sensitive undertakings imaginable. It must be conducted according to established procedures in close and harmonious conjunction with the host country. It concerns me that in the future the Commerce Department will be sending its agents abroad to initiate such exercises. It also concerns me that the Commerce Department intend to turn to Foreign Commerical Service employees for assistance in overseas investigations. These employees are not trained in law enforcement, are not perceived by foreign officials as being law enforcement officers and, in many instances, have limited interest in doing law enforcement work. They were assigned to American embassies to promote trade. If they are to do law enforcement investigative work and if they are to be engaged in the export control side of the Commerce Department's mission, their training and job descriptions should be expanded to include these additional assignments. Traditionally, the U. S. Customs Service has had foreign investigative responsibility -- in smuggling cases and in export investigations. Before this tradition is altered, Congress, as well as the Department of State and other affected agencies, should give the subject hard scrutiny.

In that regard, I have written to the Secretary of State to call to his attention the foreign investigative mission the Commerce Department has taken on. I have also written to Senator Percy, Chairman of the Senate Foreign Relations committee. If a new policy with regard to foreign investigations is to be put into place by the Commerce Department, certainly the State Department and the appropriate Committees of Congress should have an opportunity to evaluate it. Mr. Chairman, I request that the letters to Secretary Shultz and Chairman Percy be received as exhibits.

In his letter to me, Secretary Brady also makes clear his continuing determination to establish the Commerce Department as the principal and pre-eminent entity for enforcement of the Export Administration Act in the United States and abroad. In fairness to Mr. Brady and his dedication to this objective, it should be acknowledged that he has made changes in the Commerce Department's enforcement effort. He has created an Office of Export Enforcement to replace the discredited Compliance Division. He has placed in charge Theodore W. Wu, a former Assistant U. S. Attorney with technical expertise, law enforcement experience and a proven record of success in prosecuting diversion cases. Mr. Brady has opened six-person offices in San Francisco and Los Angeles. He has tried to weed out of his team inexperienced and untrained agents. He is attempting to obtain law enforcement status for Mr. Wu's agents, authorizing them to carry firearms and make arrests.

In light of the changes Mr. Brady has made in the Commerce Department's ability to investigate reported violations of the statute, it is logical to assume that the Department will develop, and be able to take credit for, some important diversion cases in the near future. Similarly, Customs, through its Operation Exodus, will continue to develop and take credit for its own diversion cases, big and small. Both Commerce and Customs are to be commended for their successes. But still remaining, and still hampering the nation's interest in export controls, is the basic government operations weakness of having two competing agencies assigned the same task. It is likely, in fact, that a stronger enforcement arm at Commerce will aggravate the competition between the two agencies and make it all the more difficult for the executive branch to fashion a smooth functioning, well coordinated export control system -- and achieve a method of export controls that blends

in harmoniously with an improved trade policy, a policy fair to business and industry while recognizing the need to regulate certain high technology exports. Achieving such a balanced trade policy will be a difficult, demanding challenge -- and we in Congress should make it abundantly clear to the executive branch that interagency jealousies and in-fighting over turf will not be tolerated. Customs is a law enforcement agency with long standing jurisdiction and experience in detecting, investigating, and apprehending criminal violators of federal laws. The Commerce Department's experience and traditions in law enforcement at best are limited and recently claimed. I believe there is no question which agency should be directed to carry out enforcement of export laws. Whether it is within a new Office of Strategic Trade or under an amended Export Administration Act, the responsiblity to investigate violations of the law should reside with the Customs Service.

Shifting Enforcement Function To Customs And Creating OST Would Help Solve Export Control Problems

The Subcommittee Minority staff put forward the view that two solutions are available to the export law enforcement problem. One solution is short term, the second longer range. I share my staff's opinion. Immediate relief could be found if the enforcement function in the Commerce Department were abolished and all its responsiblities placed in the U. S. Customs Service. This would insure that competent, professional agents, trained in formal, traditional law enforcement procedures, would be assigned to investigate alleged violations of the Export Administration Act; that they would work under the supervision of executives who have formal, traditional law enforcement backgrounds; and, perhaps most important of all, the entire function would exist in a Cabinet-level Department, Treasury, with longtime experience in and commitment to traditional law enforcement activities. As I mentioned at the outset, I have this week introduced legislation which contains that specific proposal.

In terms of longer range considerations, I would then recommend that Congress consider the proposal of Chairman Garn to create an independent Office of Strategic Trade that would take the Export Administration Act mechanism from Commerce, including the enforcement function.

I have already expressed my support for the Garn proposal to create an OST and am pleased to join as a cosponsor. I am taking other steps to improve the government's ability to enforce export controls. Yesterday I introduced legislation that was the result of the Investigations Subcommittee's May 1982 hearings. The bills are designed to halt the unauthorized export of militarily critical dual-use technology.

The three-bill legislative package would:

-- Amend the Export Administration Act by transferring the criminal enforcement function from the Commerce Department to the Customs Service; and amend by making it a crime to possess or attempt to possess restricted technology and goods with an intent to export them. The current law delays arrest until the technology actually leaves the United States.

-- Expand the enforcement tools of the Customs Service by giving agents express statutory authority for warrantless arrest and search and seizure upon reasonable cause regarding outbound cargo and persons. The new authority would be similar to that which Customs agents now have regarding inbound cargo and persons.

-- Amend federal racketeering statutes to make illegal diversion violators subject to increased prison sentences and civil penalties.

-- Amend the electronic surveillance statutes to permit court-authorized surveillance when there is probable cause to believe that a violation of technology laws is being committed.

-- Recommend that the President initiate negotiations with U. S. allies to prosecute or extradite persons in their countries who are believed to have violated American export laws; and that he reorganize the nation's system of export regulations, basing revised controlled commodities lists on a timely appraisal of what specific technologies the Soviets need and want and cannot obtain elsewhere in the world.

-- Make it a federal offense to steal, receive, buy or use bribery to obtain technology with the intent to export it unlawfully.

-- Amend the Freedom of Information Act to exempt requests from foreign nationals.

Mr. Chairman, I have the bills and a copy of my remarks in the Senate introducing them. I request they be received as exhibits to these hearings.

Importance Of Intelligence Evaluation Capability And Center For Technical Expertise For Exports Is Emphasized

As is apparent from my testimony, it is my view that improved intelligence will help us greatly in building a better system of export controls. Creation of a professional intelligence evaluation capacity is essential to the success of an Office of Strategic Trade. The OST should have at its disposal timely and accurate information on Soviet technological needs, the Soviets' historical interest in various technologies, the Soviets' state-of-the-art achievements in crucial military technologies, and the availability of these technologies elsewhere in the world. I would recommend, Mr. Chairman, that as your Committee perfects its blueprint for the OST that you give a high priority to the intelligence evaluation capacity.

Within the framework of intelligence and technical support for the OST, I would also recommend that you consider creation of a center for technical expertise to be located at a National Laboratory whose purposes would be 1) to provide technical evaluation on export cases too complex for routine licensing applications; and 2) to conduct research into technical questions related to export matters.

That concludes my statement, Mr. Chairman. Thank you.

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The CHAIRMAN. Like Senator Heinz, you have, on another committee, worked long and hard on these issues, and we appreciate your willingness to aid the Banking Committee in our deliberations.

We intend to work very closely with you as we work to reauthorize the Export Administration Act.

Senator Proxmire, do you have any questions or comments?

Senator PROXMIRE. I would like to commend Senator Nunn on his excellent statement. It was a most helpful contribution, and we will undoubtedly do our best to work with you.

My feeling about this whole thing is that because of the location of the office, the defense problems involved here have been overlooked as long as we persist in this kind of a bureaucratic arrangement, and you hit that very hard.

Senator NUNN. If I might add one other thing, Senator Proxmire and Senator Garn, and I should have had this in the statement because it is important, but it doesn't lend itself to any kind of legislative thrust, I do not believe.

DUAL USE TECHNOLOGIES

But one of the keys here, we are dealing with dual use technologies. We are dealing with technologies that many times are not even used at an early stage by the Department of Defense.

We are not necessarily dealing with items that the Defense Department is already working on. We are dealing with a lot of American companies that have sometimes the cutting edge in technology. Sometimes they are out in front on defense research and development.

I think if we can get this kind of intelligence and analysis, a sort of reverse engineering of what the Soviets really need and what would really help them, we can start with that.

One of the most important things the Government could do is to educate the businesses of America about the kind of technologies that they are developing that the Soviets might be targeting. That education role has got to be carried out by almost every agency that is involved in this.

I think 99 percent of American businesses are patriotic, and although they are motivated by profit, as well they should be, I think if they know that what they are doing may very well assist the Soviets and that their own plant may be subject to Soviet penetration, either overt or covert, I believe we would see a drastic improvement.

I think we also have to recognize, as one of the witnesses did before our subcommittee, that when we talk about compliance and we talk about law enforcement sometimes we conjure up the image of intercepting huge boxes of equipment going out of the country. In some cases that is accurate, but many times we are talking about technology that can be contained in a pencil. We are talking about know-how. We are talking about items that I can't even describe because they are so miniature.

So controlling all of this at the border is virtually impossible, whether it is Customs or whether it is Commerce or whether it is a

new office, whatever. We are going to have to control it at the origin in many cases.

That means the plants that are developing, and that means in intensive education campaign, preceded by a very strong intelligence analysis and narrowing that list down.

The Government will lose credibility or will continue to have very little credibility in this area if businesses perceive that there is a great big broad giant coverage trying to cover everything, particularly if businesses perceive that we are trying to cover things that can be bought over the shelf or that can be easily purchased anywhere.

Then you start losing credibility on the key items that can only be gained through covert activity.

The CHAIRMAN. It is rather ironic that the Soviet military can obtain things that our own military does not yet have from our own high technology sources in this country.

Senator Hawkins?

Senator HAWKINS. Senator, I, too, congratulate you for your deep interest and active involvement in something so vital to the national defense and interest.

I was wondering if you had any personal feelings from your investigations regarding joint ventures between high tech companies in the United States and companies in countries such as France.

ESTABLISH PRIORITIES WITH OUR ALLIES

Senator NUNN. That is an area that increases the exposure, increases the danger and so forth, but I think it's absolutely essential if we're going to operate an alliance—I wouldn't want any laws that we pass to be so restrictive that we thwarted the effort to move toward more commonality and more cooperation in NATO, because if you look at the overall picture, we're actually spending year in and year out more money in NATO than the Warsaw Pact is. That's not true every year, but it's true most years, yet we're getting a lot less back.

So, I think we have to establish priorities in cooperation with our allies. That has to be a priority. When we have these joint ventures, if we can begin to have a better analysis of what the list of critical technolgy is, then I think an intensive education campaign should be a prerequisite at the very beginning of those kinds of joint ventures.

Senator HAWKINS. Thank you.

The CHAIRMAN. Senator Lautenberg, do you have any questions?

Senator LAUTENBERG. No. I just thought the statement was so good that I'm inclined without yet knowing the substance too well, to immediately join in with Senator Nunn, but I do want to reserve some time to investigate further. [Laughter.]

The CHAIRMAN. Thank you very much, Senator Nunn. We appreciate your being here and look forward to working with you.

Senator NUNN. Mr. Chairman, I will insert a couple of things in the record, a very brief summary of some of the examples we've summarized here.

The CHAIRMAN. We'd be happy to include them in the record.

[Information subsequently supplied for the record can be found on p. 175.]

The CHAIRMAN. Thank you again, and now, Mr. Olmer, we'd be happy to receive your testimony at this time.

STATEMENT OF LIONEL OLMER, UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE, ACCOMPANIED BY LAWRENCE BRADY, ASSISTANT SECRETARY FOR TRADE ADMINISTRATION

Mr. OLMER. Thank you, Mr. Chairman. It's a delight to be so welcomed. [Laughter.]

We appreciate the opportunity to testify before your committee.

The CHAIRMAN. You are welcome. I don't hold you responsible for the last 30 years.

Mr. OLMER. I feel responsible for the last 2 and for at least the next 2.

I'd like to introduce Larry Brady, who works for me, and is the senior political appointee in charge of the entire range of trade administration functions.

In respect of this hearing, I refer especially to export enforcement and export administration.

Mr. Chairman, your letter of invitation to Secretary Baldrige said that the particular issue you wanted to examine would be the Department's commitment and its ability to enforce the Export Administration Act.

On Secretary Balridge's behalf and on my own as his principal administering office, I want to declare our resolve to make the system work from foreign policy controls on exports to Africa, South Africa, and enforcement of any boycott regulations affecting primarily Israel, to those national security controls on strategic commodities to the Soviet Union.

The question of whether the system is effective requires a judgment which I'm afraid is all too easy to reject, because things don't work perfectly.

The fire department's record will never be perfect, but the system can still be acceptable.

TOTAL PREVENTION OF TECHNOLOGY LEAKAGE UNACHIEVABLE

We are performing in the Commerce Department and in the entire interagency export control system, what amounts to a damage control function. Total prevention of technology leakage will simply not occur. This administration has give vitality to the process which has existed for many years, and we are continuing to craft improvements. The differences that arise within the administration are quite small in number.

Last year more than 85,000 license applications were received by the Commerce Department for export and only 6,600 were national security control cases to so-called proscribed destinations.

Of these 6,600, because of delegations of authority which we received from the Defense Department, only 1,800 needed to be referred to the interagency review process, and of the 1,800, fewer than 200 resulted in any measurable degree of interagency dispute. Within the 200, only 20 were referred to the Assistant Secretary level or higher. That is two hundredths of 1 percent of the totality of export applications results in what I would call contentious

issues, and I would remind the chairman that the Defense Department in national security cases to proscribed destinations has a veto.

The support of the business community for an effective national security control system is absolutely essential to making it work. I believe we have the support from the vast majority of businesses.

As you know, to prepare for renewal of the Export Administration Act, we recently conducted public hearings in six cities across the United States, and this support was demonstrated, despite the frequently heavy costs which the business community must bear, because of our enforcement and our licensing delays, which sometimes inevitably result.

Those costs translate into lost sales opportunities and ultimately jobs for Americans.

I'd like to talk for just a minute about changes in Government policies over the last few years on national security export controls which have had enormous effects, mostly negative, on the Government's ability to restrain the transfer of unilaterally usable technology.

SHORTSIGHTED EXPORT LICENSING POLICIES

This administration has repeatedly pointed out that shortsighted export licensing policies during the late 1970's and 1980's, primarily during the era of détente, encouraged a liberalization of the entire export control system. In those years all departments and all agencies involved in regulating exports hoped that increased trade would moderate Soviet behavior.

Mr. Chairman, no one agency stood apart from the philosophy today, even the Defense Department shared the optimism for the new era that was supposedly dawning in U.S.-U.S.S.R relations.

The well-known examples of commodities previously licensed for export to the Soviet Union and bloc countries, which have had an adverse effect on our national security, were made with the unanimous support of all agencies.

The case of ball bearing grinders is illustrative. The 1972 decision to grant that license was made following President Nixon's visit to Moscow, and incidentally, refers to the 1961 Commerce Department decision on that very piece of equipment. Guided by the policies in place, all agencies approved that license.

The Kama River Truck Factory case was no different.

Détente also affected resource allocation at the Department of Commerce. Export Control was incorporated as an organization entity into a trade promotion office and was reduced in size from over 270 people to 150 people.

The downgrading resulted in an inability to function effectively throughout the rest of the 1970's.

In 1980, that same Export Administration office was weak from the earlier personnel cuts and by the loss of senior managerial personnel. That's what the Reagan administration faced when it took office in January 1981. Since that time, the adminstration has worked hard, in some cases effectively, but I acknowledge that we haven't done nearly as much as needs to be done.

We have worked to determine what technologies the Soviets need, what they have obtained, how such acquisition has helped the Soviets further their goals, and what methods they used to obtain the technology.

The CIA reports to which you referred, didn't get made out of whole cloth. We cooperated, contributed and spurred them on to produce that particular report. We have worked to develop on a multilateral basis the support and the commitment of our allies to prevent further technology leakage to the Soviet Union.

We have worked closely with industry segments involved in the development and production of high technology to retard the growing problem of industrial espionage. Our own commercial sector is heavily targeted, as has been pointed out, for illegal acquisition. It is one of the most vexing and productive areas for Soviet and East European technology acquisition efforts.

We have required the intelligence agencies to prepare and to keep current an analysis of Soviet technology acquisition targets and methods, and that is read, analyzed and critiqued by Mr. Brady and others in our department on a regular basis.

The Department of Commerce's role has been substantial in all of these areas, as well as in efforts to strengthen Cocom. The voluntary, informal organization of NATO nations, plus Japan, less Iceland, which for 25 years has coordinated to restrain military-related technology from being transferred to the U.S.S.R. I need to underscore that Cocom is an informal group which acts only on consensus of all members. In connection with our Cocom negotiations, some of which are taking place at this very moment in Paris, we are updating the list of commodities to be controlled and are working with various groups of experts from Federal agencies in the United States and from the business community. The Government simply could not do this without the help of businessmen and private sector technical people.

The technical advisory committees on dozens of different technological specialties are identifying that which is sensitive, while simultaneously weighing the critical factors as feasibility of control, foreign availability and the economic impact of such controls.

The Department has pressed for increased industry participation in its review process, as it is, as I said, earlier, an essential ingredient. We are working with our Cocom partners to strengthen their national and our common multinational enforcement efforts. Improvements in information sharing across national boundaries and other forms of cooperation among the Commerce Department and other pertinent agencies, such as the FBI and Custom Services, have been made. We are pressing to harmonize licensing procedures among all Cocom member States, so that a standard of careful scrutiny is established.

The Office of Export Administration in the Commerce Department has expanded its computer system to support our licensing and enforcement functions. Its capabilities include the fact that all new license applications are now entered into the computer, and that over 300,000 existing licenses are stored. We have provided for access to this computer from three remote sites in New York, Los Angeles, and San Francisco, for specific enforcement purposes.

The data base in the computer supports not only licensing, but provides valuable information which does help the FBI, the Customs Service, the CIA and Commerce's own enforcement operations.

We will soon be expanding it to enable the district offices throughout the United States in some 47 different cities to have the ability to access the system on a real-time basis to check the status of cases, destinations, and users.

We will integrate intelligence data into this system. For enforcement use, we will include information on foreign availability, and we will integrate that system with that of other agencies in the Government.

INCREASE IN BUDGET AND MANPOWER

We have increased the budget and the manpower of our Export Administration organization. It has risen by 24 percent and the budget by 71 percent from that over 1980.

Most recently, 25 full-time technical professional are being hired now for technical licensing.

We have instituted a series of lectures to help the exporting community.

Commerce, district office employees, and other enforcement agencies have understood that the Export Administration regulations are inordinately complicated and that a regular process of tutoring is required.

The course that we now have reviews of a variety of basic information, such as how to use the commodity control list, how to fill out license applications, and how to examine the different types of licenses.

Large corporations in the United States, by and large, understand how to live with the system. It's the small- and medium-sized businesses in America that often suffer inordinate delays because of their own inability to pay for the skills that are necessary.

We have created a separate office recently dedicated to export enforcement. I would point out it is the only entity in the Federal Government which has a sole and exclusive purpose of enforcement for Export Administration. It is headed by a new Deputy Assistant Secretary, a gentleman with well-deserved credentials as a successful, hard-driving Justice Department prosecutor in export control cases.

We've increased this enforcement budget for export control from under $2 million in 1980 to nearly $4 million in 1984. We've hired 35 criminal investigators and intelligence specialists since August of 1982 alone, and we're in the process of recruiting for additional personnel. Those agents are highly trained.

We've opened two new enforcement offices in the United States. And we are negotiating now for an increase in perhaps three additional offices in the United States.

We are procuring vehicles, communications, and surveillance equipment. We've spent a third of a million dollars to equip the agents with state of the art surveillance equipment.

The additional resources allocated to the Office of Export Enforcement have shown results thus far.

We are working with the U.S. attorneys' offices around the country on 20 different cases. Fifteen of them have already been referred to the Justice Department since last June.

Just a few weeks ago, our special agents stopped a major shipment in New York of semiconductor manufacturing equipment valued at over $400,000, in the process of being exported to Italy without the required validated export license. The equipment, a photo-repeater system, is controlled for national security reasons. And our investigation began over 5 months ago. Surveillance and undercover operation and overseas inquiries were involved.

That kind of coordinated effort probably couldn't have happened as recently as a year ago, but it is happening now in that instance and in several others that I'm not at liberty to discuss now.

Another area of successful performance—and we should take special note of it because it does not often come in for publicity—is that of enforcement efforts in the antiboycott area.

Settlement agreements under this administration have more than doubled between 1981 and 1982. We've imposed penalties that have more than quadrupled over the previous administration's, and we've doubled the number of warning letters that have gone out.

The business community does not look on the Commerce Department as a benign entity, I can assure you, in antiboycott enforcement, as well as in national security.

TECHNOLOGICAL REVOLUTION

Mr. Chairman, I submit that many of the problems that we are facing today and that you and your members are justifiably concerned about are really not with the licensing system or the organization. They lie more with the nature of the technological revolution that's taken place in the last decade or so and with the political philosophy that underlies the commitment to technology transfer.

For example, the private sector today, much more so than the military establishment, is now at the forefront of technology in electronics and the application of electronics to defense systems. The ready availability through the general public of that technology would put enormous strains on any licensing system or on any organization.

Radio Shack alone sells computing systems and their components, semiconductors, at levels of sophistication not yet widely used in any component part of the U.S. defense system.

We are faced with several urgent questions:

One, how can we adequately stem technology transfer in an open society? Or anyone, from KGB agents to legitimate foreign visitors, can walk into any store in many major American cities and purchase, in a few minutes, more computing power than was available in the entire United States a relatively few years ago.

For that matter, the information readily available from technical magazines and Government publications seems clearly beyond our power or our desire to control.

How do we get non-NATO countries to join us in denying to the Soviet Union and to the Soviet satellite countries what we see, but not necessarily what they see, as militarily critical technology?

How do we define "militarily critical" in ways acceptable to our own allies, who produce virtually the same products as we do?

Until such an understanding is achieved, effective multilateral controls will not be realized. And without multilateral controls, I have grave concerns that we will not achieve the objective all of us seek.

How do we develop a critical technologies list which our cooperating business community accepts as rational?

The Department, I believe, has made substantial progress in implementing its export control mandate. Much more needs to be done by all of us and will require a lot of support from your committee, as well as many others in the Congress.

I'd like to close for a minute by perhaps diverting, for purposes of example, to what we talk about in terms of widely available technology all over the world.

This happens to be a Speak-and-Spell system produced by one American corporation which contains a microprocessor. This unit can be transfered in the world anywhere under a general license. That is, the corporation is not required to have an application approval by the Department. But any component part of this system that represents a microprocessor component necessitates a valid license. So, if the user system breaks down in France or in any one of the other seven countries in which Speak-and-Spell is sold in that foreign language, the company in the United States requires a validated export license, which can take months and months and months.

We have an inordinately difficult time convincing our business community and the family of business communities and government organizations throughout Cocom that it is, indeed, in our common best interests to attempt to control Speak-and-Spell.

We keep trying, again, Senator.

Thank you very much. [Laughter.]

[The complete statement follows:]

STATEMENT OF LIONEL H. OLMER
UNDER SECRETARY FOR INTERNATIONAL TRADE
U.S. DEPARTMENT OF COMMERCE
BEFORE THE
SENATE BANKING COMMITTEE
FEBRUARY 3, 1983

I appreciate the opportunity to testify before the Banking Committee on the subjects of export controls and the Commerce Department's responsibilities for their administration.

Mr. Chairman, we believe the existing structure provides for careful review of applications and effective enforcement.

Effectiveness of Current System

The interagency licensing system has been revitalized by this Administration. Commerce has a working relationship with Defense based on statutory and delegated authority, and we are continuing to craft administrative improvements to the review process. The differences between Commerce and Defense are quite small in number. Last year, of the 85,075 license applications received by Commerce, 6,635 were national security controlled cases to proscribed countries. Of those cases, because of existing delegations of authority, approximately 1,800 were sent to Defense for review.

Of that number, fewer than 200 required interagency discussions for resolution. And of these, fewer than 20 cases had to be escalated to the Assistant Secretary level or higher. That is two hundredths of one percent (.02%) of the total license applications received.

Although both Commerce and Defense share national security export control responsibilities, Defense has a unique role. Under the Export Administration Act (EAA), the Secretary of Defense has authority to review national security controlled items to proscribed countries. Only the President can override the Secretary of Defense's recommendation that a license application be denied; and in that event the President is obliged to report to the Congress on his action. In determining what items should be controlled for national security reasons, Commerce and Defense have an equal role, and disagreements are escalated to the President.

In the revitalized interagency process, all the principal advisory agencies under the EAA, and other agencies with an interest in export control issues now participate actively. The interagency groups include the Operating Committee, the Advisory Committee on Export Policy, and the Export Administration Review Board which is chaired by the Secretary of Commerce.

In addition, within the past year, new Senior Interagency Groups (SIGs) have played an increasingly active role in shaping East/West trade policy, thus permitting greater scope for interagency involvement.

Support of the Business Community

It is instructive that the proposal for an OST, or any similar organizational change, was strongly and unanimously opposed by all members of the business community who spoke on the issue at the recently concluded hearings sponsored jointly by the President's Export Council and the Department of Commerce in six cities across the United States. In these difficult times, the business community is concerned that changes in export control responsibility will preclude economic considerations from being weighed in export control decisions.

The vast majority of the business community supports an export control system and national security controls. The public hearings I mentioned demonstrated this beyond any doubt. The existing structure maintains the support of the business community despite the heavy cost our vigorous enforcement and occasional license delays sometimes extracts from them.

The Administration's currently reviewing the Export Administration Act in preparation for its upcoming renewal. The public hearings I referred to are a part of our overall effort to solicit public and interagency comments on the Act. Such solicitation has proven invaluable in helping us identify problem areas, which will be addressed in an Administration bill once our review is completed. Therefore, consistent with the scope of this hearing, I will defer all comment on the non-organizational provisions of the EAA to a later time

16-556 O—83——5

The Changing Policy Environment

Mr. Chairman, the Administration knows that the OST concept stems from your deep concern over technology transfer and the threat it poses to U.S. national security. Be assured that you are not alone. Technology transfer is also of vital concern to the Reagan Administration.

This Administration has repeatedly pointed out that our short-sighted export licensing policies during the late sixties and seventies, the so-called era of detente, encouraged broad liberalization of the export control system. In those years, all departments and agencies involved in regulating exports hoped that increased trade would moderate Soviet behavior. Mr. Chairman, no one agency stood apart from the philosophy of the day. Even some in the Department of Defense seemed to share this optimistic attitude.

All agencies follow the policy guidance of the day. None act independent of that policy. An Office of Strategic Trade would be subject to the same policy guidance as other agencies. To examine the well-known examples of commodities previously licensed for export to the USSR and Bloc countries which have had an adverse effect on our national security, is to see revealed that these decisions were made with the unanimous support of all agencies.

The case of ball bearing grinders illustrates my point. The 1972 decision to grant this license was made following President Nixon's visit to Moscow and, incidentally, reversed a 1961 Commerce decision on this equipment. Guided by the policies in place all agencies approved that license.

Other examples include computer equipment for the ZIL truck factory (a facility that had been denied in 1969), and for the Kama River plant in 1975.

Detente also affected resource allocation at the Department of Commerce. In November 1972, the Bureau of East-West Trade was established as Commerce's policy-making arm for East-West trade. Its purpose was export promotion. The Office of Export Control was incorporated into the Bureau of East-West Trade where it was eventually reduced in size from 273 to 150 people. This downgrading of the control functions was largely responsible for the current Office of Export Administration's (OEA) inability to function efficiently through the rest of the 1970's.

In 1980, OEA was still weak from these earlier personnel cuts and by the loss of the senior managerial ranks through retirement. This is what the Reagan Administration inherited when it came into office.

Actions Taken by Commerce

Since January 1981, the Department of Commerce has played a key role in the Administration's efforts to:

1. Determine what technology the Soviets need, what they have obtained, how such acquisition has helped the Soviet Union further its goal of military superiority, and what methods the USSR is using to obtain the technology it needs.

2. Develop, on a multilateral basis, the support and commitment of our allies to prevent further technology leakage to the Soviet Union.

3. Work closely with industry segments involved in the development and production of high technology to retard the growing industrial espionage problem. Our own commercial sector is heavily targeted for illegal acquisition efforts. Industrial espionage has become one of the most productive areas for Soviet and East European technology acquisition efforts.

4. Examine all possible avenues for identifying and protecting defense-sensitive technologies, including technical documents which are not now subject to our classification system.

5. Require the intelligence agencies to prepare a comprehensive and dynamic analysis of Soviet technology acquisition targets and methods.

The Department of Commerce subsequently has had a major role in the efforts of the Administration to strengthen COCOM.

1) The 1982-83 COCOM List review, which is focusing on making the voluntary COCOM organization a more effective mechanism for controlling Western transfers of keystone equipment, materials and technical data to the Soviet Union. (The first round of negotiations in this list review started in Paris on October 5, 1982, and will run until February 25, 1983. A second round of negotiations is scheduled to start in April or May.) Work already done on the refinement of the Militarily Critical Technologies List (MCTL) has provided a firm foundation for U.S. efforts in these negotiations.

2) We are continuing the refinement of the MCTL, which started out as a comprehensive listing of commodities and technologies reaching far beyond those normally thought of as militarily critical. The lion's share of this work is being accomplished by Technical Advisory Committees (TACs), comprised of experts from pertinent Federal agencies and, I want to underscore this, from the business community. The government simply couldn't do this without the help of businessmen and private sector technical people. The TACs are identifying sensitive

technologies, while simultaneously weighing such critical factors as feasibility of control, foreign availability, and the economic impact of controls.

The Department of Commerce has pressed for the increased industry participation in this review process. This approach assures a balancing of economic, security and other viewpoints.

3) We are working with our COCOM partners to strengthen national and multilateral control enforcement efforts. Improvements in information-sharing and other forms of cooperation among Commerce and other pertinent agencies, such as the FBI and the U.S. Customs Service, have been made.

4) We are leading the effort to institute licensing procedures that will insure adequate, individual COCOM member country review of proposed transactions prior to licensing. Such harmonization of licensing procedures must be backed by the enhanced enforcement efforts we are seeking.

5) The Office of Export Administration is expanding its current computer system to support Commerce's licensing and enforcement functions. OEA has acquired a new, more powerful computer system of its own. The capabilities of the present prototype system include:

- o data entry for all new license applications

- data on 300,000 already-processed applications

- 53 terminals to the system, of which 8 are allocated to the Exporters' Service Staff for accessing information to efficiently answer exporters' inquiries

- access by three remote sites -- New York, Los Angeles, and San Francisco -- into the system for enforcement purposes

- an on-line tracking system for all cases to proscribed countries, and certain exports, such as computers, to Free World countries.

The data base OEA has built up with this computer system supports not only our licensing function, but provides invaluable information to help the FBI, Customs, the CIA, and Commerce's own enforcement offices' investigations.

By next year the system will be expanded to:

- enable the DCC District Offices to access the system to check the status of cases

- integrate intelligence data for enforcement use, and automate the screening of license applications

- o include information on foreign availability

- o integrate the system with those of other appropriate agencies for expeditious sharing of information.

6) We have increased the budget and manpower of the Office of Export Administration (OEA). Positions allocated to OEA rose by 24 percent and the budget rose by 71% from $4.5 million in 1980 to $7.7 million in 1984; Twenty-five full-time technical licensing professionals are being hired.

7) We have instituted a series of lectures to help the exporting community, Commerce district office employees, and other enforcement agencies, understand Commerce's Export Administration Regulations. This course reviews basic information such as how to use the CCL, how to fill out license applications, and examines the different types of licenses. The response to date has been highly favorable and we are receiving an increasing number of requests for this course.

I have attached a detailed statement to my testimony on enforcement efforts which I request be printed in the Record. (Attachment A). This attachment also directly responds to specific findings in the Department of Commerce Insector General report of June 11, 1982. I have also attached statistics on our increased enforcement effort (Attachment B). For the purposes of this hearing, however, I would like to briefly highlight the facts that:

1) We have created a separate Office of Export Enforcement headed by a new Deputy Assistant Secretary.

2) We have increased the enforcement budget for export control from $1.7 million in 1980 to nearly $3.8 million in 1984 increase of 124 percent.

3) We have hired thirty-five criminal investigators and intelligence specialists since August 1982 and are hiring more. These new agents are all highly trained.

4) We have devised a strategy based on the need to deploy our criminal investigators to high priority investigations.

5) We have opened two new enforcement field offices and we have obtained and are continuing to procure vehicles, communications, and surveillance equipment. Since August, 1982, in fact, we have committed $350,000 to equip agents with state-of-the-art investigative equipment.

6) We are developing memoranda of agreement with other pertinent agencies regarding procedures such as exchange of information and coordination of investigations, and

7) We are engaged in a program of public presentations designed to actively encourage the private sector to voluntarily comply with the EAA. This effort is in conjunction with OEA's series of lectures. We believe improved private sector understanding of the export control program will reduce inadvertent, unlicensed exports of controlled products and technology.

Results Achieved

The additional resources allocated to the Office of Export Enforcement, and the leadership exercised by the new management of this office have already shown significant results. For example, the Office of Export Enforcement is currently working with the United States Attorney's offices around the country on some twenty cases. At least 15 of these cases were referred to the Justice Department by OEE since last June; 7 are either joint Commerce/Customs, or Commerce/FBI/Customs cases; and we are assisting Customs with two of their investigations. Our enforcement efforts are showing results. On January 24, 1983, Office of Export Enforcement special agents stopped a major shipment of semiconductor manufacturing equipment valued at about $400,000, which was being exported to Italy without the required validated export license. The equipment, a photo-repeater system, is controlled for national security reasons. OEE's investigation of this case began about five months ago. Surveillance, an undercover operation, and overseas inquiries were initiated. We expended considerable investigative and support resources in the effort. Such a coordinated effort would not have been possible a year ago.

Another area of success which I would like to bring to the Committee's attention is our enforcement efforts in the Antiboycott area which have been substantial. Settlement agreements rose from 20 in fiscal year 1981 to 43 in fiscal year 1982; penalties assessed rose from $385,000 in FY 81 to $639,750 in FY 82, and warning letters for reporting violations rose from 1,100 in FY 81 to 2,500 in FY 82.

In addition, the the Antiboycott Compliance Office last year issued the most significant revisions in the regulations since they were first adopted in 1978. These revisions, among other things, should reduce the paperwork burden on the business community by as much as 30 percent.

Appropriateness of the Current Institutional Arrangement

I would like to emphasize the importance of the close working relationship between our offices of Export Administration and of Export Enforcement. Each benefits from the other's knowledge, expertise, and proximity. Closely-shared information and resources have proven critical to effective action in preventing critical exports. Licensing and enforcement of the Export Administration Act cannot be effectively separated.

Furthermore, because of its role in both export control and its relationship with the business community, in our opinion Commerce is ideally suited for the lead role in export controls. A strong economy is a vital part of our overall national security. Economic considerations must not be excluded in crafting and implementing export controls. At the same time trade must not be pursued at the expense of overall security considerations. The Department of Commerce carefully balances these dual, not necessarily incompatible, mandates.

Implications of the Technological Revolution

Mr. Chairman, I submit that the problem is not with our licensing system. Rather, it lies more with the nature of the technological revolution that has taken place in the last decade or so and with the political philosophy underlying the commitment to technology transfer.

For example, the private sector, more so than the military establishment, is now at the forefront of technology in electronics and its application to defense systems. The ready availability to the general public of this technology would put enormous strains on any licensing system. Radio Shack alone sells computing systems and their components -- semiconductors -- at levels of sophistication not yet widely used in U.S. defense weapons or their support elements.

We are faced with several urgent questions:

-- How to define "militarily critical" in ways acceptable to our allies, who produce virtually the same products we do. Until such an understanding is achieved, effective multilateral controls will not be realized.

-- How can we adequately stem technology transfer in an open society where anyone, from KGB agents to legitimate foreign visitors, can walk into any store in every major American city and purchase in a few minutes, more computing power than was available in the entire United States a relatively few years ago? For that matter, the information readily available from technical magazines and government publications seems clearly beyond our power or desire to control.

-- How do we get non-NATO countries to join us in denying militarily critical technology to the Soviet Union and its satellite countries?

Mr. Chairman, these are some of the basic problems which must be solved. They transcend any agency's administration of export controls, for their true solution lies in the strength of political will.

This Administration has the will and is committed to dealing with these issues.

The Department of Commerce has made substantial progress in implementing its export control mandate. I ask for your continued support.

ATTACHMENT A

No Comprehensive Appraisal of or Effective Overall Strategy to Address the Nation's Technology Leakage Problem

- We have devised a strategy based on the need to deploy our criminal investigators to high priority investigations.
- Agents are being specially trained in export control matters and in standard criminal investigation techniques.
- The strategy will also involve the application of intelligence analysis and automatic data processing to case selection.
- We are working with the private sector to achieve greater awareness of, and voluntary compliance with, export control laws and regulations.
- We are procuring advanced ADP hardware with a classified storage capability to be used by OEA's Licensing Division and OEE.
- We are obtaining the necessary software for our ADP system. The target date for operational status for the hardware and for completion of the ADP system development phase is September 1983.

Lack of Strong Leadership and Clear Lines of Organizational Responsibility

Inadequate Management Direction And Oversight

- Beginning last summer Commerce embarked on a complete reorganization of its export enforcement program.
- The old Compliance Division in the Office of Export Administration was abolished. The Office of Export Enforcement (OEE) was created.
- OEE, together with the Office of Antiboycott Compliance, was placed under the direction of a newly created Deputy Assistant Secretary for Export Enforcement.
- We selected Theodore W. Wu as Deputy Assistant Secretary; he has an unparalleled record in export enforcement and is responsible for the successful prosecution of the Edler, the Spawr Optical Research and the Bruchhausen cases.
- At the time Mr. Wu joined us, Secretary Baldrige and I made it very clear to him that this Department was ready and able to provide him with the management support and resources that he needed to effectively direct Commerce's export enforcement programs. It has been, and will continue to be, a high priority for us to meet that undertaking.

Failure to Use Modern, State-of-the Art Intelligence, Investigative, and Enforcement Techniques and Systems

- Since August 1982 more than thirty-five criminal investigator have been hired.
- Intensive recruitment of additional criminal investigators and intelligence personnel is underway.
- Deputy Assistant Secretary Wu is personally overseeing this recruitment process.
- Our new agents come to us with substantial experience as federal criminal investigators. With such agencies as the Postal Inspection Service, Naval Investigative Service, IRS, FBI and Customs.
- We are taking the necessary steps to provide OEE agents with law enforcement powers to undertake search and seizure functions, make arrests and carry firearms.
- Our newly hired agents come to us equipped with substantial law enforcement training as well as experience.
- Personnel who were with us prior to the reorganization of our enforcement program will receive or have already successfully completed necessary training at the Federal Law Enforcement Training Center at Glynco, Georgia, and other appropriate training programs.
- We are developing a specialized training program to equip our agents to deal with factors which are unique to export control investigations. The program will be operational in September 1983.
- A standard agent's manual is in development and should be completed in September 1983.
- A former senior Assistant United States Attorney has joined Mr. Wu's staff and will assist him in the directon of this training program.

Inadequate Travel Funds, Law Enforcement Equipment, and Other Support Resources

- Two new enforcement field offices have been opened in San Francisco and Los Angeles bringing the total to four. The New York and Washington Field Offices are being strengthened.
- We intend to open additional strategically situated field offices in the next eighteen months and expand our present investigative and intelligence manpower.
- Extensive procurements of vehicles, investigative, communications and surveillance equipment are underway.
- Since August 1982, we have committed $365,000 to equip these agents with state-of-the-art investigative equipment. We intend to spend an additional $70,000 during the remainder of this fiscal year.
- Operational travel is essential to the successful resolution of cases, and we have budgeted $152,000 for this purpose in this fiscal year. This is an increase of $70,000 from the previous year.

Inadquate Cooperation and Coordination With the U.S. Customs Service and Vital Information Sources in the U.S. intelligence Community

- Our agents work closely on investigations with other agencies, notably Customs and the FBI.
- We are developing memoranda of agreement regarding procedures such as the exchange of information and coordination of investigations with the concerned federal agencies. The target date for completion of these agreements is June 1983.
- The frequency and effectiveness of cooperative activities between OEE agents and those of other agencies has improved markedly in past months.
- A sensitive investigation is being undertaken with the Justice Department's Internal Security Section.
- Additionally, there are other investigations currently in progress with various U.S. attorney's offices.
- We have paid particular attention in recent months to the improvement of our relations with the Customs Servce. There must be close cooperation between our two organizations with respect to investigatory activity.
- On June 18, 1982 the Department issued a "blanket" determination under Section 12(c) of the Export Administration Act permitting the Justice Department to use certain protected information in the prosecution of export control violations arising out of Operation Exodus.
- We have established open lines of communication between our two services at various levels to review operational and policy matters.
- The enforcement of the embargo on the export or reexport of U.S. origin oil and gas related products and technology to the Soviet Union provides an example of the working relationship between the two agencies. We coordinated on a daily basis to effectively implement the embargo and were able to keep administrative difficulties at a minimum.
- We have had a healthy exchange of information with Customs on a number of issues in connection with the completion of a Memorandum of Understanding between our two services.

- One major issue remains for resolution, namely, the conduct of overseas phases of export control investigations. We do not share Customs' view that they should control and conduct all overses investigations of the Export Administration Act.

- To the contrary, it is our opinion that effective enforcement of the Export Administration Act requires that Commerce be involved in the international as well as in the domestic phases of such investigations.

- The majority of export enforcement cases have international as well as domestic facets. Any attempt to implement separation between the two would lead to an artificial division of investigatory effort which would impede the U.S. Government's overall ability to enforce the Export Administraton Act.

- Many export enforcement cases, especially diversion cases, involve parties who are beyond the reach of the U.S. criminal process. Indeed, some of these do not involve any culpable U.S. persons.

- In such situations we have a potent sanction available to us, namely, administrative denial by the Department of export privileges.

- Commerce has representatives assignd to more than 100 overseas stations who can effectivey make prelicense and post shipment inquiries, which may or may not have criminal investigation potential--but which are critical to the licensing determination process.

- Our discussions with Customs are continuing and we are confident that we will be able to resolve this last remaining issue in a mutually agreeable manner in the near future.

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Unwarranted Interference in the Detailed Conduct of Investigative Operations

- Mr. Wu is establishing a thoroughly professional law enforcement organization. Individual case agents will be responsible to team leaders who in turn will report to Special Agents in Charge in the various field offices. The entire structure will be headed by a Director of the Office of Export Enforcement.

- Special care is being taken to select intermediate and top management for these positions.

- Unwarranted interference of the sort described in the Inspector General's Report will not be a factor in the operations of the Office of Export Enforcement.

Use of Antiquated or Inefficient Internal Administrative and Management Systems and Procedures

- The DAS/EE and his staff are closely reviewing all current OEE procedures.

- A standard OEE agents manual is in development. This will be the basic handbook for guidance on criminal export enforcement procedures.

Mr. Chairman, the key problem areas discussed by the Inspector General have either been solved or are in the process of cure. We still have much work to do to bring this program up to a desired level of effectiveness; however, we have made a great deal of progress since last summer, progress with tangible results which indictes that we can and should continue with an export enforcement mission.

I would like to take this opportunity to briefly review with you our record to date of improved enforcement performance.

Improved Enforcement Performance

- OEE is able to dedicate far more time and effort to field investigation, interdiction of illegal exports and the development of information sources than was possible prior to the reorganization.

- We have already been able to build the rapport, expertise, and "street sense" needed for useful leads and enforcement results on a continuing basis.

ATTACHMENT B

Mr. Chairman, I would like to acquaint the Committee with the recent record of our inspection program. It demonstrates that Commerce is making a difference and that the finite resources that we bring to bear on one aspect of the problem of illicit technology transfer have positive and meaningful results. To make these statistics more meaningful and to give them additional perspective we have also included applicable statistics from the Customs Service's Operation Exodus.

Commerce OEE and Customs Inspection Program Activity

Time Period	Inspections Conducted	Detentions	Violations Resulting in Seizures	Ratio of Violations to Detentions
FY 81 - Commerce	10,369	628	128	.255
FY 82 - Commerce	9,124	584	242	.425
FY 82 - Customs OPEXODUS	(*)	2481(1)	765(1)	.308(1)
FY 83 - Commerce(3)	2,227	167	81	.485
FY 83 - Customs(3) OPEXODUS	(*)	809(2)	286(2)	.353

(1) These statistics are published in the Customs Operation Exodus - FY 82 Report dated 13 December 1982. They represent the "total number of Operation Exodus seizures for FY 82" in "33 ports". Of the 765 seizures, 82 were "OMC Seizures" made pursuant to Customs enforcement of the State Department-administered Arms Export Control Act. Thus, the ratio of detected violations to detentions resulting from Customs enforcement of the Export Administration Regulations is .275.

(2) These statistics represent the number of detentions and seizures reported by Customs to Commerce OEE Facilitation Section.

* The number of inspections conducted by Customs is unavailable to Commerce. According to the Operation Exodus - FY 82 Report published by Customs, when Exodus was initiated in FY 82, the Commissioner of Customs "directed that 49 special agents, 35 Customs inspectors, 35 Customs patrol officers, 5 import specialists and 2 analysts be assigned to the program". The Operation Exodus program extended its coverage to 33 ports by the end of FY 82, with an additional 292 full-time positions provided for the program.

Inspections by Commerce are conducted only at JFK International Airport, New York, by four full-time and one part-time inspectors.

(3) As of 11 January 1983.

The CHAIRMAN. As the father of seven, I'm totally familiar with Speak-and-Spell. I think it should be issued to all Senators. [Laughter.]

Mr. OLMER. I have them in all seven languages.

The CHAIRMAN. I would like to say, first of all, that no one could agree more that it's impossible for total stoppage.

So, in your testimony, by starting out and suggesting that it's impossible, we know that.

My bill, Senator Heinz—no one else is going to do that. We recognize that. We don't need to be patted on the head and told that.

Yes, Speak-and-Spell can go. Your testimony is dramatic, cute. You got some applause. We recognize that, Mr. Secretary.

We're talking about the difference between an uncontrolled hemorrhage and controlled bleeding.

And I said in my testimony that I appreciated the efforts of this administration to improve. When you start from practically nothing, it would have been impossible for anybody not to improve over the past 30 years.

I also said in my opening testimony, in three different cases—and repeated it for Senator Heinz—that my bill was a draft, that I invited cooperation.

Let me send a warning to this administration. If you want to take a blind position in opposition, as I have heard has been going on, that this is just wrong, that you're proud of your accomplishments, so be it.

On the other hand, you know I work on this committee to achieve consensus, as I did in my banking bill. So, I suggest the administration might be a little cooperative as well, rather than just taking blind opposition, when they have been given an invitation to cooperate on three different occasions in this testimony.

This is an oversight hearing on the performance of Commerce. The bills have not yet been introduced. We will have specific legislative hearings. You will be invited to testify about what you like and what you do not like. I would hope it would be constructive, in the spirit that I have outlined today, as has Senator Heinz and everyone else on this committee, to work together, to try and improve and get the hemorrhage to controlled bleeding.

The bleeding will always be there. There's nothing you or I or any other administration or any other Congress can do about that.

That's the spirit—I am willing to work on this. If the administration wants to do the same, we can produce a better result when this Export Administration Act is completed or reauthorized this year. But if they want to take what I've already heard, that they've already started lobbying against the bill—it has no pride of authorship, serving initially to get this discussion going—that's your choice.

I challenge this administration to be cooperative, to see if we can correct this problem as much as possible that we all agree on. No one disagrees on the problem or the past.

I hope that is the spirit in which this administration would come to these hearings and to future hearings and see what we can work out together.

I really don't give a damn whether we have an export office that is separate. I am interested in solving the problem.

CRITICISM FOR 30 YEARS

Mr. Secretary, we appreciate your patience. You indicate improvements are being made and further improvements are planned, I commend you for that, but that's the same story I've heard ever since I have been in the Senate. These complaints are as old as 1948. On December 18, 1948, the Senate Committee on Expenditures in the Executive Departments issued a report on its hearings on the administration of export controls by the Commerce Department. In that report the committee criticized gross inefficiency on the part of the employees and noted the enforcement responsibility was taken lightly.

That's in essence what we've heard all of these 30 years, so if you wonder why we're skeptical, it isn't any criticism of you or current personnel: things change, you may be there another 2 years, you may be there another 6 years, so my question is rather than continuing just to accept, as we have for 30 years, that improvements will be made without regard to any specific proposals, why isn't it a good idea in the reauthorization of the Export Administration Act that whatever ideas you and the Congress can come up with be put in the legislation in such a way as to make sure that those improvements are continued into the future and are not just the efforts of this administration or that administration.

Mr. OLMER. Oh, I think—I hope I didn't say anything in my remarks or anything that appears in my statement for the record which suggests in any way an unwillingness to work most carefully with you and the other members of this committeee and other committees in an effort to strengthen and make more effective our export control system.

We have every intention of doing so and we hope to be back to you within the next month, within this month, perhaps as early as the first week of March, with an administration view as to the issues that are posed in our perception in the existing Export Administration Act. And I don't think they'll be very far from the ones that you've identified.

The CHAIRMAN. I hope so. That's why I was so forceful in trying to indicate that I want to bring these issues to a head without any great concern on whose bill it is, whether it is mine, Senator Heinz's or Senator Nunn's, but to come up with a consensus that will solve the problems.

It's not so much what you've said in your open testimony today, but for weeks reports of blind opposition—we're going to get the Garn bill—from this administration. I just want to make sure that is not the case, that this administration is willing to cooperate in producing legislation that will go beyond, because even if you were doing a fantastic job and had improved things dramatically in the last 2 years, administrations do change. New Presidents are only minor irritations to the bureaucracy——

[Laughter.]

The CHAIRMAN [continuing]. Because the bureaucrats know they will be around a long time after Presidents come and go. That's why I feel so strongly that legislative remedies are needed rather than just promises from an administration, whether those promises

are fulfilled or not, so that we guarantee that we don't go through another 30 years of each administration trying but not succeeding.

Mr. OLMER. Senator, if you'll permit me. There will be undoubtedly areas of your legislative proposal with which we disagree. You would call them opposition to your bill, but I hope at no time will you have justifiable cause for calling it blind opposition to your bill, and I hope that you would be prepared—as you indicated it is a working draft—for us to introduce reasons why we don't think one component part of that bill is the appropriate way to go to achieve the objectives which I think we share in common.

We are prepared to do it.

The CHAIRMAN. That is the normal legislative process and that is the purpose of specific legislative hearings: to examine a bill line by line, paragraph by paragraph. And I wanted to emphasize that in all of this I hope we can come up with a consensus before September 30 that achieves all of our goals.

The inadequacies in the operations at the Office of Export Administration have been demonstrated by the administration's failure to establish the foreign availability assessment operations called for by the Congress in 1979. According to the annual report for fiscal year 1982 a program manager for foreign availability was not hired until the spring of 1982. By the close of fiscal year 1982, OEA was still evaluating to whom to grant a technical services contract for the establishment of a foreign availability assessment capability. The annual report still speaks of foreign availability in terms of what it will do in the future. The principal declaration of what has been done so far in the way of foreign availability is to state and I quote: "During fiscal year 1982, no cases that otherwise would have been denied were approved on the basis of a foreign availability assessment." That, in essence, is a confession that more than 3 years after Congress made its will very clear on this very important aspect of the law—crucial to both intelligence evaluation and for the relief of our exporters—the Commerce Department's performance in this area has not produced anything yet, except promises for the future. How do you respond to that?

Mr. OLMER. Congress expressed its will but didn't appropriate any money, so we were hard-put to establish that Office after the expression of the policy intent that such an Office be established.

Now, we have moved forward recently, we do have a contractor performing the function, and I would say that we have made from the beginning of this administration efforts to engage the intelligence agencies in the process of aiding us in foreign availability determinations.

Second, and I would return to a remark that I made earlier, by the importance of cooperation from the business community we have tens of thousands of highly sophisticated products and technologies under control and it's truly going to be the business community—the international business community based in the United States that is most often going to have the inside into what is available through foreign sources.

It isn't simply foreign availability, it is really foreign availability not subject to U.S. control. That's a very important distinction to be made because we would argue that if a product or technology was available in one of our Cocom countries or a non-Cocom coun-

try but a country which we would term an ally, we still have a shot at bringing that under control through a bilateral arrangement, or through accession of that product or technology to the Cocom agreed-upon list.

It gets to be a very complicated area, Senator, I can only say that we now have three people—I think they are actually assigned now—and a contractor. Both the business community has been very helpful and other elements of the government have been working with us.

FOREIGN AVAILABILITY

The CHAIRMAN. Let me ask you, on the Cocom, we talked a great deal about foreign availability—that is the normal excuse used over and over again; I've heard that. Well, if we hadn't sold it, somebody else would.

But isn't it true that more than 50 percent of all requests for exceptions to the Cocom list come from the United States over a period of years?

Mr. OLMER. That is a fact, sir.

The CHAIRMAN. In other words, so nobody misunderstands, we had requested more exceptions to the Cocom list than all of the other Cocom members combined.

Mr. OLMER. It is also a fact, however, that not everything on the Cocom lists represents commodities or technologies which are possessed only by Cocom member states. So it cuts both ways.

But you're stating a fact.

The CHAIRMAN. AFL–CIO President Lane Kirkland sent a letter to Secretary Baldrige last fall which was very critical of the Department's field hearings on the Export Administration Act. The letter in part said that the "noncongressional public hearings in port cities to be chaired by business leaders who are members of the President's Export Council shows that this issue will not get an appropriate public hearing."

How do you respond to Mr. Kirkland's criticism?

Mr. OLMER. I reject them, sir. The AFL–CIO was invited to participate, they chose not to. Mr. Kirkland, subsequent to the receipt of that letter, was given an invitation by Secretary Baldrige to come up and to present his views in an extended briefing session with Mr. Brady, myself and others at the Department with that responsibility.

No acceptance of that invitation was tendered. The hearings were held in six cities to which I referred, and represent an incredibly important means of acquiring what the public thinks about our processes.

You hear a lot of what are sometimes conflicting goals; you can't have a strong Commerce Department and say, "Well, they shouldn't get into the enforcement area." The congressional statute says we have an enforcement responsibility, you can't say we do a more effective job in foreign availability, or should do a more effective job in foreign availability, and then indicate that we're allowing too much to go abroad when it shouldn't.

The hearings were very important for crystallizing what the business community, largely the business community, perceives to be the major difficulties with the system in their minds.

I know we don't have time to get into the report of the results of those hearings, but let me just say that those hearings demonstrated that the business community supports an export control function. They clearly would prefer that it's not a foreign policy export control system, but in the area of national security, we quibble around the edges, we quibble around the fact that as Senator Nunn has appropriately pointed out, the list is far too large.

Those observations are very important to us and they will be to you, sir, in the course of the oversight hearings and the legislative review of your propcsal, and we will be making them available to you in a structured and comprehensive form very soon.

The CHAIRMAN. Thank you. Senator Proxmire?

Senator PROXMIRE. Mr. Brady, you're Lawrence J. Brady? There was a man with a name exactly like yours who testified on September 24, 1980, before the Committee on Governmental Affairs. His name is the same, but I don't think it would be the same person, except what he said, which seems to contradict much of what I've heard this morning.

Let me quote what this other Lawrence J. Brady said. He said:

> I feel there are certain areas in which the Commerce Department, no matter what personalities are in authority, will always be deficient in its implementation of long-term export control policies as mandated by the Export Administration Act. Whatever personalities always—first one department simply cannot be expected to simultaneously administer export promotion and control policies, the Commerce bureaucracy cannot—cannot be structured to omit the influence of export promotion pressues. At some level in the Commerce hierarchy an official is always forced to wear two hats, whether it is the Under Secretary, Assistant Secretary, or the Deputy Assistant Secretary's level.
>
> Second, the Commerce Department is called upon periodically to submit proposed amendments to the export Administration Act when it's being reviewed for extension. For 6 years Commerce's suggestions on what should become law created loopholes in the system, especially in controls for national security purposes.
>
> Third, the Commerce Department has not publicly espoused or represented the political philosophy of the export control policy as mandated by Congress. A separate Office of Strategic Trade will be able to represent the point of view necessary to support regulatory policies as mandated by Congress.
>
> And fourth, finally, the Commerce Department has no bureaucratic structure to perform analyses of export strategy and coordinate these strategies with other Western industrial nations. There is in effect no open spokesman for the country's commitment to its goals and policies in export controls.

How about that?

The CHAIRMAN. It was a good statement then, it's still a good statement.

Senator PROXMIRE. It sure is. This other fellow did quite a job. What is your response to the other Lawrence Brady?

Mr. BRADY. I think it's a great statement, too, Senator. I wish the microphone would go dead.

I think obviously conditions have changed substantially in that 2- to 3-year period.

Senator PROXMIRE. Always wasn't very long. You said "will always be deficient."

Mr. BRADY. There will always be a trade promotion focus on the part of the Department of Commerce in any decisions that have to be matched, any export control decisions, foreign policy decisions

or whatever. If they are not inputted by Commerce, they would be by the USTR—Mr. Brock's office, or by some agency.

The "always" was a very strong word. I do think that we have made significant strides in correcting the deficiencies that have built up during the 1970's.

Senator PROXMIRE. Now let me come to the period June 11, 1982, well into your term, Mr. Olmer. This is from the Department of Commerce's Inspector General.

FINDINGS OF COMMERCE'S INSPECTOR GENERAL

Now, you've done a good job in responding to this, but I must say, this was the finding by your own Department's Inspector General, he said these problems include with respect to the adminstration's Compliance Division, Office of Export:

No comprehensive appraisal of or effective overall strategy to address the Nation's technology leakage problem, insufficient trained personnel, inadequate management direction and oversight, failure to use modern state-of-the-art intelligence, investigative and enforcement techniques and systems, lack of strong leadership and clear lines of organizational responsibility, unwarranted interference in the detailed conduct of OEA/CD, investigative operations by the Deputy Assistant Secretary for Trade Administration, indequate cooperation and coordination with the U.S. Customs Service, inadequate travel funds and other support services, use of inadequate or inefficient administrative management systems and procedures.

And they go on to say:

Many of the problems highlighted in this report have been highlighted in earlier reviews provided to ITA management. They have failed to correct these problems despite strong public statements by the President and past administrations to support effective controls over the export and high—technologies. This failure raises serious questions about the Department's commitment to and ability to enforce the Export Administration Act of 1979.

You've come prepared, you have an attachment A, you have specific, detailed answers to every one of these charges. I commend you, I think it's a noble try, but the fact still stands that promotion of exports and control does clash, the fundamental purpose of the Commerce Department must be to promote—that's always going to clash with control—and as far as enforcement is concerned, it does seem to be an incredible duplication that would have to be put into effect if your Department is going to enforce this where Customs has 100 agents to your 1—however it is structured, it has the expertise, the policy is followed in every other nation where their customs will enforce this kind of law.

What's your general response?

Mr. OLMER. Well, my general response—I'll start with being specific, as I know the Senator prefers.

The report of the Inspector General came after a lengthy investigation by the Inspector General, which investigation was conducted because I asked for it. I asked the Inspector General to place at the top of his priority an examination of what we were doing wrong in the export control area. It wasn't as if we were trying to hide what was happening, to deny the lacunae in our efforts to make it more effective. We were glad to see it exposed.

We've made a lot of progress in that area, and I guess I'd like to give you a couple of additional specifics about number one——

Senator PROXMIRE. Let me just interrupt to say that these findings were June, this past June, only about 6 months ago, a year and a half after your administration took over.

Mr. OLMER. He took several months to conduct the investigation, and my priorities to the Inspector General were rationalized among departmental priorities as well. I gather he will be testifying a little later. You can ask him about that, but it is a matter of written record, that within my area of responsibility which does extend to both export promotion and otherwise, I did ask that he give this No. 1 priority.

With respect to your observation that promotion and control are in conflict and can't be handled in the same place, I don't think that's so I've watched now, the process of consideration of sensitive technology cases, from the working level, the lower levels of the Department up through the Cabinet level, and it seems to me that, as in our system of justice an advocacy or adversary process sometimes does the best job of getting the truth or the facts all laid out on the table.

The areas of technology which we are and should be most concerned with almost always do not enable one to make a clear-cut choice. There are a variety of factors which need to be considered, and you've addressed a number of them. It isn't simply a matter of saying, "This is high technology, and, therefore, should not be allowed to be transferred." For a variety of reasons, it may yet be high technology that you can do nothing about controlling.

The process of having an export promotion person feed into that process is, I think, an essential ingredient of it. I think that is much of life, we've got difficult choices to make, and this is one of those instances. I don't see a debilitating effect of having two functions performed in one department.

Senator PROXMIRE. I've got great respect for you. You are a fine witness, very articulate, and obviously, very intelligent. And what you did in having your Inspector General investigate this and come forward as he did, deserves a great deal of commendation, but this has gone on for 30 years in Democratic and Republican administrations, and we've continued to have this problem with very able people, such as you, who are doing their best to try to overcome it. It just hasn't worked out.

As recently as—this inspection report was in April of last year, so it's relatively recent.

Mr. OLMER. Perhaps the most notorious case on record is the so-called Bruchhausen case, which Senator Nunn referred to, in which a successful prosecution was made, and the man escaped to West Germany where he resides, and we are engaged in negotiation over our efforts to get him back here and imprison him. The Federal prosecutor who pursued that case for a couple of years to success is now our Deputy Assistant Secretary for Export Enforcement. He's the same gentleman who's undertaking a vigorous effort to beef that area up and is doing an effective job. He understands, I believe—you know, we isolate or insulate him from a great deal of the trade promotional function. He has got no responsibility for that aspect of it at all, but unlike the Customs Service, he has only one enforcement responsibility. That enforcement responsibility is exports. His time is devoted exclusively to that, and

it is not competed for with respect to drugs or smuggling or immigration or a variety of other things. His sole and exclusive function is export controls.

And I think that makes the Commerce Department's role a unique one in this area and an important one.

It will always be small, relative to the Customs Service, but I don't think for that reason it should be tossed aside.

Senator PROXMIRE. My time is up, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Hawkins?

STATIONS OF INVESTIGATORS

Senator HAWKINS. Mr. Olmer, I understand the Department has five or six inspectors to cover the entire country, and that all these men are stationed in New York. In addition, I was told that 87 percent of controlled exports leave from the west coast. Given this situation, why are all of your inspectors in New York?

Mr. OLMER. Senator, we have recently opened two offices on the west coast, in San Francisco and Los Angeles. One criticism, and an admission against interest in the IG report, was that we dilly-dally in the hiring of personnel to man those offices. On the other hand, we didn't want to hire people who were not competent, and it took a long time to get trained criminal investigators, but they are in place now. They are out on the west coast.

Senator HAWKINS. Are they investigators or inspectors?

Mr. OLMER. They are investigators.

We have under consideration a budget request for an additional 87 people who would move to additional offices in the country and perform an inspection function. But New York is not an unimportant place. JFK is a place I just mentioned where 2 weeks ago, I did restrain a most important sensitive shipment.

Senator HAWKINS. Well, are my facts straight? Eighty-seven percent of the controlled exports leave from the west coast, and you have no inspectors there. You have just recently placed some investigators there, but no inspectors?

Mr. OLMER. We do not have inspectors based at the ports of exit from the west coast.

Senator HAWKINS. And 87 percent of the exports leave from the west coast.

Mr. OLMER. I'd have to refer to my files to give you a judgment as to whether that's accurate or not.

Senator HAWKINS. Would you verify that?

Mr. OLMER. I would be happy to.

Senator HAWKINS. Given the sizable resources available to the Customs Service for port inspections, wouldn't it be more effective and efficient to eliminate this responsibility from the Commerce Department and to provide export inspection training through the Customs Inspectors who are in place?

Mr. OLMER. Well, we do have a cooperative program with the Customs Service. I think there is room for the same functions to be performed by both agencies. I would say that all is not roses in the efforts of the Customs Service to seize shipments. You know, we look at the totality of the shipments which are seized and look at the number of seizures which turn out to be valid, and look at the

number of valid seizures and examine the kinds of failings they represent.

Senator HAWKINS. I thought that's why you had investigators and inspectors?

Mr. OLMER. That's correct.

Senator HAWKINS. So if the Customs Department could be trained to be investigators—I mean inspectors——

Mr. OLMER. I'm not sure I understand your point, Senator.

Senator HAWKINS. Well, you have customs inspecting anyway, do you not, on the west coast?

Mr. OLMER. Well, Customs inspects for drugs, for smuggling, for a laundry list of—crocodiles, a variety of things that aren't supposed to be exported or imported to the United States. We do one thing.

Senator HAWKINS. On the west coast you investigate.

Mr. OLMER. That is correct.

Senator HAWKINS. Now on the west coast, the customs inspectors do the inspecting for you after your investigators have determined what should be inspected?

Mr. OLMER. That is correct.

Senator HAWKINS. I understood that there are less than ideal relations between the Customs Service and your Department. I deal a lot with the Customs service in Miami, as you know, and you've been most helpful in your department.

How would you, personally, Mr. Olmer, characterize the relations between your department and the Customs Service?

Mr. OLMER. Getting better. [Laughter.]

Senator HAWKINS. Well, you gentlemen have been here longer than I have, and they say it's been going on for 30 years.

Give me an estimation when it's going to be good.

Mr. OLMER. Sure. Well, I'd say that it's not bad. Now that's like not unfit to serve, I suppose. [Laughter.]

MEMORANDUM OF UNDERSTANDING

But we are about to sign a memorandum of understanding. We are a couple of months late in getting that off the ground.

Senator HAWKINS. I understand you're negotiating the size of the table.

Mr. OLMER. No, I don't think so. I'm not looking for a Nobel Peace Prize.

Senator HAWKINS. It may be worth it.

Mr. OLMER. We are arranging for an understanding between us as to what should be done, both domestically and internationally, and quite frankly, the international area was the bone of contention. I met just earlier this week with the Assistant Secretary of the Treasury who oversees the Customs Service. We have made a joint commitment to see this memorandum of understanding completed immediately.

I do not believe there are any serious issues between us that would prevent us from getting a memorandum of understanding signed off within the next week or so.

I'd also point out that we made a major stride in giving the Customs Service pretty much all that it wants in the area of informa-

tion which is held in the Commerce Department. That is, so-called 12-C information.

Now we've been criticized, and Senator Nunn pointed out that we are, for not giving to the Customs Service information from the private sector which is given to us in the course of the private sector applications for export. And yet there is an awful lot of proprietary information in that on pricing, on competitiveness, and we simply are not at liberty to just let it go without some understanding as to what use the information will be put to.

But that's all, I think, behind us. We now have that understanding.

Senator HAWKINS. Your department has been most helpful to us in Florida in putting on export trade seminars to overflow crowds. The small businessmen, especially, are very interested in Florida. Would it not be helpful, in light of Senator Nunn's testimony, to create a list of items which we do not want to see exported, so that the information gets into the hands of the person that may be exporting it. Some of them are new in the exporting business. I imagine the majority of them are. They are, in Florida.

It seems to me you go to the source, which would be the businessman. You give him the information to begin with, and you're going to be on the lookout for these kinds of opportunities. Don't start something new up. Educate these businessmen when we have export seminars. Have we refined the lists?

CONDUCTING SEMINARS IN EXPORT CONTROL

Mr. OLMER. Senator, we've done several things. Your point is just, I think, an excellent one. We do not do as much in the way of conducting seminars in export controls as we have done in, for example, the new—brandnew exporting trading company program, but we have embarked on a number of seminars in that area, in antiboycott compliance. The gentleman who runs that shop in the Commerce Department is on the road several days a month doing exactly that, but if we were to provide the business community with a list, I think it would stagger you as to the size of that list.

Senator HAWKINS. Would it be bigger than a breadbox?

Mr. OLMER. It would be substantially larger than a breadbox, and it's edible, it's not digestible. It would require someone practically from the Commerce Department's box of crown jewels. We've got one or two left, that hopefully could explain it. It is a nightmare.

Now I have talked to a lot of businessmen, medium, small-sized and large businessmen. The issue is, the big businessmen can deal with—a gentleman I know, he's a brilliant scientist. He was hired by a company, and he spent his first year and a half learning how to deal with export control regulations. And he'll say, I work for a leading edge technology company, and my company knows now to deal with this. We don't violate the law. We get the licenses usually that we want. We have no problem. But he says, I just wonder what goes on in small and medium-sized companies. It's an impossible task for the individual businessman in a small company, to deal with that list. He's got to come to the Commerce Department for advice.

And therein lies some of our dilemma.

Senator HAWKINS. Would it not be helpful, therefore, to have the seminars for these people, even though, if they can't digest it, maybe they shouldn't go into the business.

Mr. OLMER. That would be a terrible indictment of the system. That would be as bad as anything else.

We have a telephone answering system manned around the clock.

Senator HAWKINS. Is that an 800 number?

Mr. OLMER. I don't think it is. They're dedicated phone systems.

Senator HAWKINS. Unlisted? [Laughter.]

Mr. OLMER. Well, if it's unlisted, it's just like a Washington secret; everybody knows it. It rings off the hook day and night. Rings off the hook day and night.

Senator HAWKINS. Twenty-four hours. I'd just like to suggest that we're so pleased with the export seminars you have given us in Florida, that I felt that was a reward. You know, we have a 1,200-mile shoreline. We try to restrain them through the legal exporting exits, as you know, and some small businessmen get caught in the middle, because they may be supplying a missing part that the big businessman knows very well he cannot supply.

Mr. OLMER. Senator Hawkins, I take your recommendation to heart. We will look at it, and if we're doing it in a modest way, I'll do my best to see it encouraged.

A comment was made, I think, by Senator Nunn regarding the credibility of the U.S. Government in these export control programs. What you just said about small- and medium-sized businessmen goes to that point as well. We do not have widespread credibility, and certain of our Government agencies have less credibility than others out of an overzealous belief in which the way to control technology is to control the repair parts for this system, which is simply unworkable for the small- and medium-sized businessman.

We've lost a great deal of credibility.

Senator HAWKINS. This will be my last question.

There appears to be evidence that the Soviets have very definite ideas about which technologies they would like to acquire. Senator Nunn mentioned that legislation that he's introducing is directed at this problem.

Do you believe that the Soviets have a clear idea of which technology they want to acquire from the United States?

Mr. OLMER. Absolutely.

Senator HAWKINS. What steps has the Department taken to address this situation, short of Senator Nunn's legislation?

Mr. OLMER. The Soviets not only understand what it is they want, but where it is they have the best chance of obtaining it. The Central Intelligence Agency in unclassified form has estimated that by far the preponderance of the technology the Soviets want, they acquire from either open sources, that is to say, visitors, conferences, both in the United States and internationally, and a variety of other means are available to them.

A very small part comes through the export licensing system, either through diversion or through absolutely acquiring a license for a product that should have been not licensed.

So we need to work with the community, that is to say, the export control community of the State Department and the Defense Department and the Customs Service as well.

I think we have a system in place which does that, not as well, perhaps, as it should, but it is doing it.

Internationally, this very week, Deputy Assistant Secretary Denison is in Paris on our behalf at the Cocom list review, in which we have laboriously, since last November, been working in this international forum to negotiate a list of items which should be controlled. In some areas we have relatively little difficulty. And by that I mean you get an agreement in the space of a month, working 8 hours, 10 hours a day, 5 days a week, in this international forum.

In other areas, we are not making progress, and those are the areas that I suggested to you we're going to have a great deal of difficulty rebuilding our credibility.

But that's the way in which I think we have to work, to inform the international community as to what the Soviet intentions are and to convince them that, in fact, that's the way it's working.

Senator HAWKINS. My time has expired.

I have some questions that I'll submit for you to answer later. Thank you so much.

The CHAIRMAN. Senator Lautenberg.

Senator LAUTENBERG. I am so new here that I'm still on the learning curve, but I'm just curious about a couple of things, Mr. Olmer.

Without retarding progress here too much, regarding the CoCom list just referred to, that is a constantly upgraded list of specific products or general technology that our trading partners have agreed to restrain?

COMMODITY CONTROL LIST UPGRADED

Mr. OLMER. Generally speaking, that's correct.

On the commodity control list or CCL, as it is called in short form, there are broad categories of technology represented by products that are listed. Many of them are agreed to between ourselves and our Cocom partners, that is to say, the NATO countries plus Japan, but less Iceland, not anybody else, necessarily, that should be subjected to national security. In addition to that, we have our own unilateral lists which our Defense Department in concert with the Commerce Department believes nonetheless should be controlled.

The number of products represented in this broad listing number in the many thousands.

Senator LAUTENBERG. And these are negotiated agreements. They say "no" to us once in a while, and that's it.

Mr. OLMER. It's a case of negotiating with them. They may say, no, and we say, "Well, do you understand why we are trying to control it? Let us explain to you the hazards to our common security interests by not controlling this. Let us arrange for you an intelligence briefing. We believe it will convince you that through obtaining this product or this technology, you are merely helping to shoot ourselves in our feet. That is to say, we are spending more

money at defense at the same time as the Soviet Union is learning how to do cheaper, that which causes or poses a serious threat to us."

That's a lengthy process.

The international community—if you think the Commerce Department is riddled with only export promotors, the size of our trade deficit would indicate otherwise. You'd be surprised at sometimes the near impossibility of convincing this international community that certain parts of semiconductor technology need to be controlled. They don't accept it.

Senator LAUTENBERG. And it's also readily available technology and lots of people want to sell it, and there are lots of other uses that that technology gets put to. This, relates specifically to national security work. We're not getting into a dialog on whether a competitive edge is involved.

Mr. OLMER. We've been talking exclusively about national security, and there are two other component parts of the control structure, one is foreign policy, represented most dramatically in the recent past by the pipeline issue, as well as controls on products and technology to South Africa. Antiboycott compliance is a component part of our control system. And short supply. We don't export, for example, oil from Alaska.

Senator LAUTENBERG. The antiboycott enforcement, of course, is a different kind of thing. There you're talking about contract supervision essentially, as opposed to products.

Mr. OLMER. Exactly. For example, if we did not have extraterritorial authority, we would not be able to administer the antiboycott regulations, which is to say, we have to examine records in foreign lands in which U.S. persons conduct their business activities, and that is a matter of some resentment on the part of some of our most important allies.

Senator LAUTENBERG. Just one other thing, if I may, Mr. Chairman. I heard you talk about the improvement of enforcement in the Commerce Department. The comments you make in your written statement mention that this was achieved about a year ago, due to additional resources, primarily.

Mr. OLMER. Additional Resources is an office headed by a very experienced and aggressive person and is working for a very good relationship with other Government agencies.

ENFORCEMENT SUPERVISED BY THE CUSTOMS DEPARTMENT

Senator LAUTENBERG. Can I ask you—if you would, forgive any repitition here—why enforcement could not be supervised by the Customs Department?

Mr. OLMER. Clearly, it could be.

Senator LAUTENBERG. Why shouldn't it be then?

Mr. OLMER. In my mind, one of the important reasons is that the enforcement effort should be collocated with the licensing function; that is to say, there is an awful lot of cross-fertilization of ideas and leads between the people that perform the licensing function, between our foreign commercial service officers who are located in 117 posts around the world, and our enforcement and our licensing effort in making checks on prelicense issuance, in postshipment

checks as to whether the consignee is a good guy or bad guy or is in fact the guy on the list, and so on.

Presumably, if you take the whole kit and caboodle and move it over to the Customs Service, then I suggest to you that over time, maybe in another administration, that export enforcement is less significant than drug control, and export enforcement would receive second or third or worse priority.

Commerce's export enforcement function is its sole and exclusive enforcement activity. That is why, even when it is modest, I think it ought to be done.

The one thing that I think is the most significant one, whether or not it is true is another matter, is how effectively we work with Customs. I have absolutely no quarrel with the notion that the relationship has to be harmonious. It has to be. But I do believe there is reason for two organizations to work in parallel and in cooperation.

Senator LAUTENBERG. One of your arguments refers to the collocation of functions, but one could argue that with respect to other departments. I am not about to come to a final resolution about this, so I will stop here.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Mattingly.

Senator MATTINGLY. Just a few brief comments. I was not here because I was at another hearing. As you well know, Mr. Chairman, they sometimes conflict. Ambassador Brock was testifying before the Joint Economic Committee. We are also debating the trade function, and I have a statement for the record.

[Senator Mattingly's statement follows as through read:]

STATEMENT OF SENATOR MATTINGLY

Senator MATTINGLY. Mr. Chairman, thank you for the opportunity to comment on the issue of export adminsitration. I applaud your efforts in confronting this most serious issue. With the expiration later this year of the Export Administration Act of 1979, we have an appropriate opportunity to take a close look at our current trade policy. In addition, with the course of recent events involving the authority of the Export Administration Act, particularly over the Soviet Pipeline issue, questions have been raised concerning the efficiency and limits of the existing export control system. In other words, the time to act is now.

The meaning of export control has changed since the 1960's in the Export Act of 1969, emphasis was placed on controlling exports of equipment to the Soviet Union and on shortening the list of controlled goods.

The era of détente in the early 1970's witnessed expanded contact between the West and the Soviet Union in the areas of science and technology. Where goods were controlled, a liberal policy of issuing licenses was practiced.

The Export Administration Act of 1979 provided the United States with the initial concept of restricting military critical technology. Emphasis was placed on defining a small list of military critical technology which the Commerce Department is just now beginning to use to control exports.

Today, the age of détente is discredited, and the exchange of technology and equipment, legitimate or not, has gone too far. Given the extent to which the Soviet military buildup has been supported by Western exports, the impact of the exchange has been devastating to our national security. Our Export Administration must be scrutinized and improved.

The United States, as well as our trading partners, is experiencing difficult times in trade. And, as you may know, I support efforts designed to encourage and increase the volume of U.S. exports. However, our first priority must be to prevent the export of those goods or technologies which enhance the military potential of our adversaries and which threaten our national security.

The purposes of Export Administration should be twofold: First, to insure that our national security is not compromised by trade practices and second, to serve as an efficient coordinating mechanism for the implementation of U.S. trade goals. The question to ask ourselves today is whether these objectives are being achieved. While efforts have been made in this direction, I believe changes must be made in our existing Export Administration.

As you know, Mr. Chairman, I am 1 of the 18 cosponsors of S. 2837 which, if passed, would create an Office of Strategic Trade. I commend your efforts in this matter. I support this bill for a number of reasons. By shifting responsibility for Export Administration from the Commerce Department to an Office of Strategic Trade, it corrects the inherent contradiction within the Commerce Department between export promotion, the Department's primary function, and export control.

The intent behind the creation of an Office of Strategic Trade is not to increase the amount of bureaucracy, but to streamline the activities of Export Administration. Centralizing the operation could result in reduced personnel levels, more efficient ones, and eventually, to perhaps, lower budgets.

Finally, an Office of Strategic Trade would have the independence necessary to coordinate the commercial strategic, foreign policy and other considerations that would be involved in establishing a sound Export Administration policy.

One final point. Whatever the outcome of this issue, we must stress to our allies, who are also our industrial competitors, the importance of coordinating efforts toward controlling exports to the Soviet Union and its satellite. It is only by cooperation and careful coordination with other highly industrialized countries that export controls on strategic goods and technology will succeed.

Senator MATTINGLY. I would just like to make one additional comment. I believe the legislation that Senator Garn is putting forward is badly needed. I think it shows that we really need to consolidate trade functions in the Federal Government. When they are spread over so many different agencies, there is no way you can ever get not only effective enforcement, but a coherent policy.

I assume you would think the same thing, Mr. Olmer?

Mr. OLMER. Well, as a general principle of management, I always have understood that some degree of consolidation is useful, but in certain kinds of functions it is not.

For example, I hoped there would be agreement that in the process of intelligence analysis it is useful to have some redundancy,

because it is good to have different people look at the same problem and come up with their own perceptions.

Second, I don't think a single organization, an organizational fix as it were, is the way out of the problems that we now face.

I think the same kinds of problems will be confronted whether or not there is a single unitary organization that encompasses 13,000 Customs Service people or if you said, well, no, we don't want to bring in smuggling, we don't want to bring in dope, we don't want to bring in immigration, we don't want that. We just want that part that does export enforcement.

Then you split that function, I suppose, the simplest way.

Well, I have said enough, sir.

Senator MATTINGLY. What is the simplest way?

Mr. OLMER. The simplest way is for us to have our feet held to the fire on the limitations in the way in which we perform our responsibilities and told to come up with actions that correct those deficiencies. And if you are not satisfied with that, get a changing of the guard.

I am fully prepared to stand and either defend or say that your criticisms are misplaced, but I don't think the solution to those problems rests in bringing everybody together in one building.

Senator MATTINGLY. I will take the candid approach. Thank you.

The CHAIRMAN. Thank you, Senator Mattingly. We are happy to welcome you as a new member of the committee.

Mr. Secretary, you have been here a long time and have had on your shoulders the weight of 30 years of failure to answer for all of those people that preceded you. [Laughter.]

We do appreciate your patience. I have many additional questions for the record, and I know other senators do, too, but we will release you from that 30-year burden at this time and submit the remainder of the questions to you for response in writing.

Thank you very much.

We have gone well over what we intended, and we do have four additional witnesses scheduled; however, Assistant Secretary Richard Perle, from the Department of Defense, has graciously consented to postpone his testimony until one of the subcommittee hearings in March, which will make it possible for us to hear the other three witnesses.

Mr. Secretary, we appreciate your willingness to do that and look forward to your testimony the first part of March. Thank you very much.

I would call to the witness table the Hon. William von Raab, Commissioner of Customs, U.S. Customs Service.

STATEMENT OF WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS, U.S. CUSTOMS SERVICE, ACCOMPANIED BY DENNIS SNYDER, REGIONAL COMMISSIONER, NEW YORK REGION AND ACTING ASSISTANT COMMISSIONER FOR ENFORCEMENT AND WILLIAM RUDMAN, DIRECTOR OF OFFICE OF STRATEGIC INVESTIGATION

Mr. VON RAAB. Mr. Chairman, thank you very much for this opportunity to testify before your committee concerning the Export Administration Act of 1979.

First, I would like to introduce on my right Mr. Dennis Snyder, who is our Regional Commissioner for the New York Region and is also at this point our Acting Assistant Commissioner for Enforcement.

On my left is Mr. William Rudman, who is the Director of our Office of Strategic Investigation, which encompasses the entirety of our Munitions Control and Export Administration activity.

I would also, if I might, digress for a minute and, for the record, indicate that I am pleased to see Senator Hawkins has joined your committee. She and I have had a lot of favorable experiences in fighting the drug wars in Florida.

I might say that if she will add as much to our effort to fight the drug smuggling threat in Florida as she will to the export technology drain, you are in good shape, because she has been a tremendous asset to the Customs Service and to the other enforcement organizations who have been waging that war.

The CHAIRMAN. I am sorry she isn't here to hear that, but I will refer the record to her to make sure she does.

Mr. VON RAAB. Thank you.

AUTHORITY OF THE U.S. CUSTOMS SERVICE

As you are aware, the Customs Service has recently expanded its role in the enforcement of our export control laws because the importance which these have assumed to our national security.

The authority which the Customs Service exercises in controlling exports from this country is derived from the Arms Export Control Act of 1976 and the Export Administration Act of 1979. We have been delegated responsibility for the enforcement of the Arms Export Act by the Secretary of State, who is responsible for its overall implementation, and we have ancillary authority delegated by the Secretary of Commerce for enforcement of the Export Administration Act.

The Commerce Department is the principal executive agency responsible for the implementation of the Export Administration Act.

In the course of our recently enhanced enforcement of these two export control laws, we have been primarily concerned with the loss of our Nation's critical technology. We consider critical technology to include all military-related products and technological data produced or developed in the United States which are currently unavailable to the Soviet Union and its allies and are subject to export controls.

All such technology, in order to be exported legally, requires licensing either by the Department of State or the Department of Commerce. If purely military in nature, this technology is licensed for export by the Department of State. If the technology has both military and civilian applications and is therefore dual use in nature, then the export must be approved by the Department of Commerce.

Customs has neither the legal authority nor the technical expertise to make decisions on what is or is not critical technology, and we rely on the other Government agencies who have such authority.

What the Customs Service does have, however, is the manpower and experience and the proven ability to enforce these laws, to conduct extensive investigations and cargo examinations at the border.

Historically, the U.S. Customs Service has been stationed at our borders and has guarded this country from illegal imports harmful to our society, our economy, and our defense for nearly 200 years. Prior to 1981, Customs' experiences with the illegal export and diversion of dual use technology was limited. These experiences occurred pursuant to requests from the Commerce Department for assistance in conducting searches based upon Federal warrants and in making arrests and seizure.

Commerce Department investigators do not have authority to take such actions on their own, and they rely upon Customs special agents and inspectors to assist them.

In addition to those investigations which were opened by Customs at the request of Commerce, we have also conducted several investigations of our own in the late 1970's and early 1980's. The results of these investigations indicated that our Nation's critical technology was being easily acquired in the United States, shipped from here and then diverted from its stated destination in allied countries to the Soviet Union and elsewhere in the East bloc.

DISREGARD OF ENFORCEMENT MEASURES

In our preindictment discussions with potential codefendants and witnesses in these investigations, we often heard their disregard of U.S. export controls and enforcement measures. The disregard for the law to which our career investigators were witnesses indicated to them that the enforcement of our export laws was receiving very limited attention.

These massive movements of critical technology to the East were being accomplished blatantly, with a minimum of deceit or cover by those in violation.

One of the early and most well-known of those export cases in which we participated with the Department of Commerce was that case now commonly known by the name of its principal foreign perpetrator, Werner Bruchhausen.

I believe Senator Nunn discussed this case to some degree, and Secretary Olmer said Deputy Secretary Wu was deeply involved in the prosecution of this case.

The Reagan administration recognized early on that protecting our Nation's critical technology was vital to our national security, and until this administration the severity of the problem had been overlooked.

OPERATION EXODUS

One of the first acts of the Treasury Department and Customs Service was to implement the stated policy of this administration and commit the Customs Service to do its part to protect our technological resources. As a result, in October 1981, Operation Exodus was conceived and implemented.

The Customs Service was in a unique position to make an immediate contribution. The initial manpower and tools necessary to

search out bound cargo for unlicensed critical technology was already in place.

The first stage of Operation Exodus was to concentrate primarily on inspection of outbound cargo. Since few inspections had been made by any agency in the recent past, it was essential to establish the program by exhibiting an active presence at the border. This is much the same as Customs' presence at the border in our efforts to prevent drugs from entering the United States. Without an inspector examining cargo and baggage, narcotics would be openly brought in. The mere presence of the inspector forces much stricter compliance.

The results of the past year's operations would indicate that the first stage of Operation Exodus has had the desired effect of increased compliance with our country's export laws. Exporters are now more aware of their responsibility, particularly under the Export Administration Act, and though a few export shipments have been delayed as a result of this program, these delays should diminish substantially in the near future.

We are making major efforts to better educate our inspectors to recognize those particular exports which may be in violation of our export laws. We are also planning to introduce minicomputers into the field, which will be programed with key information that will enable the inspector to make an immediate determination as to the licensing status of a specific commodity.

Our experiences in dealing with illegal exports indicated that we in Customs were capable of dealing with this problem, and the results of Exodus have proved this.

In order for any product in the United States to reach the Soviet bloc, it must first cross our borders and leave this country. Customs officers stationed at all of the ports where imports arrive and exports depart have the opportunity to examine both the outgoing merchandise and its accompanying documentation to insure that it is in order.

In Washington, we have established an Exodus Command Center to support our field examination teams and to obtain essential licensing and product identification information from the authorities on these matters in the Departments of State and Commerce.

At the outset of the program, it was evident that once the customs' presence had been established, which it now is, export violations would be uncovered more through investigations than inspections. Just as the drug smuggler uses more and more ingenious methods to deceive the Customs inspector, so too will the high tech smuggler in the future turn to more devious means.

The second stage of Operation Exodus is focusing primarily on investigations and intelligence. The investigations of the illicit export of strategic technology from this country to a prescribed destination is little different from the investigation of the import of contraband into this country from anywhere else in the world. Both involve the movement of persons and things across national borders. Both require the cooperation of the professional police and investigative forces of numerous countries, and both involve some article which is considered contraband once it leaves the originating or producing country.

Customs special agents are qualified to investigate violations of the Export Administration Act and the Arms Control Act. They are well trained at detecting various smuggling techniques and in investigating import violations. They have developed numerous contacts among the importing community, which to a large degree is also the same as the exporting community.

Once the Customs Service has firmly established the Exodus program domestically, we will be beginning to rely heavily upon our foreign officers to investigate violations of our country's export laws. Stage 3 of Operation Exodus draws on the established expertise of our foreign officers to investigate attempted diversions of controlled commodities.

FOREIGN CUSTOMS SERVICE ASSISTANCE

While obtaining foreign cooperation has been one of the great problems in establishing effective U.S. and allied export controls, we have had less of such problems in obtaining the assistance of foreign customs services. The customs services of almost every allied country with which we deal are responsible for the control of both exports from and imports into their respective countries.

The cooperative agreements which the Customs Service enjoys with other customs services gives us liberal access to their corresponding paperwork, cargo examination, and surveillance capabilities.

In addition, our foreign-based investigators are well versed in the languages and manners of the countries in which they work and live.

With over 700 career criminal investigators, stationed both here and abroad, Customs has the people trained and in place to conduct any investigation of a violation of our export control laws.

In both the second and third stages of operations, these valuable resources are being widely used. Some of our early detentions and seizures caused difficulty in the exporting community, as we enforced for the first time in many instances our export laws.

Our inspectional teams are much more familiar with the nature of U.S. electronics exports and the necessary controls. Detention times have been cut in half in the first year of Exodus, and we are in frequent contact with the major electronics manufacturers to insure that their products move quickly and efficiently to foreign markets.

In order to further facilitate legal and proper export movements without diluting our investigative program, we have now stationed Exodus port coordinators at the major ports in this country.

While generally responsible for Exodus enforcement, these port coordinators are also expected to familiarize themselves with strategic technology manufacturers, sellers, and forwarders in their areas and the export shipments of all of these. Our port coordinator will become the point of contact with the exporting community.

It will be the customs officer primarily responsible in a given area for seeing that our export laws are enforced without overly burdening or delaying the vast majority of the perfectly proper and beneficial exports of high technology from this country.

While it is difficult to fashion any program which will be 100 percent effective, I feel that Operation Exodus has proven to be the right program at the right time.

I have attached and submit for the record, if you will permit, a year-end report on Operation Exodus as appendix 1 to my testimony.

While there remains some rough edges, which we are working hard at smoothing over, the overall program is, in my mind, a tremendous successs. Despite the challenge we face in initiating this program, the message from the intelligence community is clear to us in the Customs Service; Operation Exodus is hurting Soviet efforts to acquire the critical technology they desperately need.

Though the first year was a success, there are still areas where improvements can be made, and these are under review within the administration.

To summarize, then, I believe that the Customs Service is in a unique position to protect our country's valuable technological resources. I believe Operation Exodus has been an unqualified success, and I can assure the committee that this project will remain a high priority within the Customs Service.

We are committed to do everything within our power to work with all of those concerned, members of this committee, Members of Congress, people in the public and private sector, both in and out of Government, to make Operation Exodus even more effective in holding the loss of our critical technology to our potential enemies.

We enthusiastically recognize that the security and well-being of our Nation demands the very best efforts of all concerned, and we pledge to do our part.

I thank you for this opportunity to speak before this distinguished committee on this all-important issue. I will be glad to answer any questions which the committee may have at this time.

[The complete statement follows:]

TESTIMONY OF WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS

On behalf of the U.S. Customs Service, I would like to take this opportunity to thank you for inviting me to speak before this committee concerning the Exporting Administration Act of 1979. As you are aware, the Customs Service has recently expanded its role in the enforcement or our export control laws because of the importance which these have assumed to our national security. I greatly appreciate the chance to speak to you today about our experiences with the Department of Commerce in the course of the enforcement of the act; our own recent success in the enforcement of this important statute.

The authority which the Customs Service exercises in controlling exports from this country is derived from the Arms Export Control Act of 1976 and the Export Administration Act of 1979, as amended. We have been delegated responsibility for the enforcement of the Arms Export Act by the Secretary of State who is responsible for its overall implementation and we have ancillary authority delegated by the Secretary of Commerce for enforcement of the Export Administration Act. The Commerce Department is the principal executive agency responsible for the implementation of the Export Administration Act.

In the course of our recently enhanced enforcement of these two U.S. export control laws, we have been primarily concerned with the loss of our Nation's critical technology. We consider critical technology to include all military related products and technological data produced or developed in the United States which are currently unavailable to the Soviet Union and its allies and are subject to export controls. All such technology, in order to be exported legally, requires licensing either by the Department of State or the Department of Commerce. If purely military in

nature, this technology is licensed for export by the Department of State; if the technology has both military and civilian applications and is, therefore, "dual-use" in nature, than the export must be approved by the Department of Commerce, Customs has neither the legal authority nor the technical expertise to make decisions on what is or is not critical technology and we rely on other Government agencies who have such authority for guidance. What the Customs Service does have, however, is the manpower, the experience and the proven ability to enforce these laws through extensive investigations and cargo examinations at the border.

Historically, the U.S. Customs Service has been stationed at our borders and has guarded this country from illegal imports harmful to our society, our economy and our defense for nearly 200 years. But prior to 1981, Customs experiences with the illegal export and diversion of dual-use technology was limited. These experiences often occurred pursuant to requests from the Commerce Department for assistance in conducting searches based upon Federal warrants and in making arrests and seizures. Commerce investigators do not have authority to take such actions on their own and they rely on Customs special agents and inspectors to assist them.

In addition to those investigations which were opened by Customs at the request of Commerce, we also conducted several investigations of our own in the late 1970's and early 1980's. The results of these investigations indicated that our Nation's critical technology was being easily acquired in the United States; shipped from here; and then diverted from its stated destination in allied countries to the Soviet Union and elsewhere in the East bloc. In our preindictment discussions with potential codefendants and witnesses in these investigations, we often heard of their disregard of U.S. export controls and enforcement measures. The disregard for the law to which our career investigators were witness, indicated to them that the enforcement or our export laws was receiving very limited attention. These massive movements of critical technology to the East were being accomplished blatantly, with a minimum of deceit or cover by those in violation.

One of the Early and most well known of those export cases in which we participated with the Department of Commerce was that case now commonly known by the name of its principal foreign perpetrator-Werner Bruchhausen. In the course of illegally shipping millions of dollars worth of strategic technology to the Soviet Union and its allies, Bruchhanusen and his U.S. based coconspirators simply avoided the necessary export licensing process altogether. Once Bruchhausen's California firms obtained U.S. produced technology, they simply relabelled it, falsified its description and sent it on to Western Germany where it was transshipped to the Soviet Union.

During the Customs Service's investigation of Bruchhausen and his associates, we learned that the Bruchhausen conspiracy shipped some $8 to $10 million worth of state-of-the-art, dual-use and military technology from this country.

The Reagan administration recognized early on that protecting our Nation's critical technology was vital to our national security, and until this administration the severity of the problem had been overlooked.

One of the first acts of the Treasury Department and Customs Service was to implement the stated policy of this administration and commit the Customs Services to do its part to protect our technological resources. As a result, in October 1981, Operation Exodus was conceived and implemented.

The Customs Service was in a unique position to make an immediate contribution. The initial manpower and tools necessary to search outbound cargo for unlicensed critical technology was already in place.

FIRST STAGE

The first stage of Operation Exodus was to concentrate primarily on inspection of outbound cargo. Since few inspections had been made by any agency in the recent past, it was essential to establish the program by exhibiting an active presence at the border.

This is much the same as Customs presence at the border in our efforts to prevent drugs from entering the United States. Without an inspector examining cargo and baggage, narcotics would be openly brought in. The mere presence of the inspector forces much stricter compliance. The results of the past years operations would indicate that the first stage of Operation Exodus has had the desired effect of increased compliance with our country's export laws.

Exporters are now more aware of their responsibility, particularly under the Export Administration Act, and though a few export shipments have been delayed as a result of this program, these delays should diminish substantially in the near future.

We are making major efforts to better educate our inspectors to recognize those particular exports which may be in violation of our export laws. We are also planning to introduce minicomputers into the field which will be programmed with key information that will enable the inspector to make an immediate determination as to the licensing status of a specific commodity.

Our experiences in dealing with illegal exports indicated that we in Customs were capable of dealing with this problem and the results of Exodus have proved this. In order for any product of the United States to reach the Soviet bloc, it must first cross our borders and leave this country. Customs officers, stationed at all of the ports where imports arrive and exports depart, have the opportunity to examine both the outgoing merchandise and its accompanying documentation to ensure that it is in order. In Washington, we established an Exodus Command Center to support our field examination teams and to obtain essential licensing and product identification information from the authorities in these matters at the Departments of State and Commerce.

SECOND STAGE

At the outset of the program it was evident that once the Customs presence had been established, which it now is, export violations would be uncovered more though investigations than inspections. Just as the drug smuggler uses more and more ingenious methods to deceive the Customs inspector, so too will the high tech smuggler in the future turn to more devious means.

The second stage of Operation Exodus then will focus primarily on investigations and intelligence. The investigation of the illicit export of strategic technology from this country to a proscribed destination is little different from the investigation of the import of contraband into this country from anywhwere else in the world. Both involve the movement of persons and things across national borders; both require the cooperation of the professional police and investigative forces of numerous countries; and both involve some article which is considered contraband once it leaves the originating or producing country.

Customs special agents are qualified to investigate violations of the Export Administration Act and the Arms Control Act. They are well-trained at detecting various smuggling techniques, and deceptive cargo trafficking practices, and through their experience in investigating import violations, they have also developed numerous contacts among the importing community which to a large degree is also the exporting community.

THIRD STAGE

Once the Customs Service has firmly established the Exodus program domestically, we will begin relying heavily upon our foreign offices to investigate violations of our country's export laws. Stage three of Operation Exodus will draw on the established expertise of these offices to investigate attempted diversions of controlled commodities.

While obtaining foreign cooperation has been one of the great problems in establishing effective U.S. and allied export controls, we have had little such problem in obtaining the assistance of foreign Customs Services. The Customs Services of almost every allied country with which we deal are responsible for the control of both exports from and imports into their respective countries. The cooperative agreements which we enjoy with the Customs Services of several foreign countries gives us liberal access to their corresponding paperwork, cargo examination and serveillance capabilities. In addition, our foreign based investigators are well versed in the languages and manners of the countries in which they work and live.

With over 700 career criminal investigators stationed both here and abroad, Customs has the people trained and in place to conduct any investigation of a violation of our export control laws. In both the second and third stages of Operation Exodus, this valuable resource will be widely used.

Some of our early detentions and seizures caused difficulties in the exporting community as we enforced, for the first time in many instances, the letter of our export laws. Our inspectional teams are now much more familiar with the nature of U.S. electronics exports and the necessary controls. Detention times have been cut in half in the first year of Exodus and we are in frequent contact with the major electronics manufacturers to ensure that their products move quickly and efficiently to foreign markets.

PORT COORDINATORS ESTABLISHED

In order to further facilitate legal and proper export movements, without diluting our investigative program, we have now stationed Exodus Port Coordinators at the major ports in the country. While generally responsible for Exodus enforcement, these port coordinators are also expected to familiarize themselves with strategic technology manufacturers, sellers and forwarders in their areas and the export shipments of all of these. Our port coordinator will become the point of contact for the exporting community. He will be the Customs officer primarily responsible in a given area for seeing that our export laws are enforced without overly burdening or delaying the vast majority of the perfectly proper and beneficial exports of high technology from this country.

While it is difficult to fashion any program which will be one hundred percent effective, I feel that Operation Exodus has proven to be the right program at the right time. I have attached a year end report on Operation Exodus as Appendix 1, and while there are some rough edges which we are working hard at smoothing over, the overall program in my mind is a success.

Despite the challenge we faced in initiating this program, the message from the intelligence community is clear to us in the Customs Service. Operation Exodus is hurting the Soviet efforts to acquire the critical technology they so desperately need.

But though the first year was a success, there are still areas where improvements can be made and these are under review within the Administration.

To summarize then, I believe that the Customs Service is in a unique position to protect our country's valuable technological resources. I believe Operation Exodus has been an unqualified success, and I can assure the Committee that this project will remain a high priority within the Customs Service. We are committed to do everything within our power to work with all of those concerned—both in the private and public sectors, both in and out of government, to help make Operation Exodus even more effective in halting the loss of our critical technology to our potential enemies. We enthusiastically recognize that the security and well-being of our nation demands the very best efforts of all concerned, and we pledge to do our part.

I thank you for this opportunity to speak before this distinguished Committee on this all-important issue. I have attached with my testimony a copy of our Exodus annual report so that it can be included in the hearing record. I will be glad to answer any questions which the Committee may have at this time.

To: Commissioner of Customs.
From: Assistant Commissioner, Office of Enforcement.
Subject: Operation Exodux—Fiscal Year 1982 Report.

OVERVIEW

Since the termination of World War II the United States has been the undisputed frontrunner in the advancement of new technology. The remarkable progress this country has achieved in this area since the turn of the century is best demonstrated by comparing the first successful powered flight at Kitty Hawk, North Carolina in 1903 with the first steps taken by astronaut Neil Armstrong on the Moon in 1969. The recent advent of a United States Space Transportation System is a positive indication that technological breakthroughs, only sheer fantasy 20 years ago, will soon be scientific and medical reality.

Our democratic system of government based on a capitalistic free enterprise approach to commerce and trade is largely responsible for our current leadership role in the area of technology development. This same free enterprise approach, however, also appears to be our "Achilles Heel" in that other governments, especially those having an adversary relationship to the United States, have been able to easily purchase or steal the most sophisticated products that American ingenuity and labor have had to offer.

Such acquisition of U.S. technology by the Warsaw Pact and its allies, whether legal or illegal, has caused severe damage to the physical security of the United States and its allies. Aside from the obvious implications resulting from the instantaneous transfer of technology through legal or illegal purchase (e.g., Soviet purchase of sophisticated computers and software from the United States), additional damage is inflicted in that Soviet research and development costs, plant construction, production and distribution costs and Soviet labor expenditures are virtually eliminated from their budget requirements. This allows the Soviets and their allies to dedicate their financial resources to the building of their military establishment.

The United States and its allies traditionally have relied on the technological superiority of their weapons to preserve a credible counterforce to the quantitative superiority of the Warsaw Pact. Our technical superiority is eroding as the Soviet Union and its allies introduce more and more sophisticated weaponry. Unfortunately, this weaponry is all too often manufactured with the help of Western technology. Stopping the Soviets' extensive acquisition of military related Western technology in ways that are both effective and appropriate in our open society is one of the most complex and urgent issues facing the Free World today.

The implementation of Operation Exodus by the Administration in October of 1981 represents a milestone in this government's efforts to disrupt the flow of U.S. technology to the Soviet Bloc and other hostile governments.

The application of intensified Customs inspections of strategic technology export shipments, combined with a dedication to prosecute willful violations of export laws as identified through Customs investigations, has been highly successful in its first year of existence. The infancy stage of Operation Exodus, although very impressive, has only scratched the "tip of the iceberg" in terms of disrupting the flow of technology to the Soviet Bloc. Our learning experience during this first year of operation has provided us with the insight, know how and determination to effectively protect our technology from acquisition by our adversaries over the years to come.

THREAT ASSESSMENT

In fiscal year 1982 the U.S. Customs Service initiated a nationwide enforcement effort, known as Operation Exodus, to both assess the threat of technology loss to the security of the United States and actively disrupt the illicit flow of strategic technology out of the United States.

In order to better understand the magnitude of the technology transfer problem, the extent of the entire U.S. technology export trade encompassing the legal as well as the illegal exports was determined

Legal U.S. exports of all commodities to all destinations during CY 1981 totalled over $228 billion. Of this amount, $34.2 billion involved technology exports. Not all technology exported from the United States is necessarily critical for national security reasons. Legal exports of critical target commodities were valued at $15.5 billion, or roughly half the technology export trade. In addition to these legal exports, a large percentage of technology is exported illegally. It is estimated that an additional 12 percent of noncritical technologies and an additional 23 percent of critical technologies are illegally exported each year, adding up to an illegal technology trade of approximately $6 billion annually; however, this illegal trade may, in fact, be as high as $9 billion.

The Soviet Union and the People's Republic of China continue to be engaged in a well-organized and intensive effort to acquire U.S. technology both here and abroad. Utilizing all available methods, these nations are acquiring advanced U.S. technology by various legal and illegal means, both overtly as well as clandestinely.

Very little of this critical technology was exported legally to the U.S.S.R., Eastern Europe, or the People's Republic of China (PRC) compared to technology exports to the West. There was a sharp decrease in exports of licensable commodities to the U.S.S.R. during calendar year 1981—approximately $80 million exported in calendar year 1981 compared to over $300 million in the previous year. Export trade sanctions in effect during 1981 due to the Soviet invasion of Afghanistan were the primary cause for this decreased export trade. More recently imposed sanctions enacted during the Polish crisis will continue this trend. Legal exports to the U.S.S.R., Eastern Europe, and the PRC combined accounted for less than 1 percent of total U.S. technology exports.

A large proportion of the legal technology exports to Eastern Europe and the PRC involved items known to be targetted for acquisition by those countries. Eastern European nations received the highest percentage of targetted items ranging from 40 to 97 percent of their legal imports of technology. Targetted items accounted only for 7 percent of the legal technology exports to the U.S.S.R., Eastern Europe, and the PRC:

Country	Total technology value (thousands)	Target items (percent)
U.S.S.R.	$79,380	7
Yugoslavia	46,658	40
Hungary	8,302	53
Romania	6,906	86

Country	Total technology value (thousands)	Target items (percent)
Poland	3,747	42
Bulgaria	2,973	97
Czechoslovakia	2,136	78
GDR	374	48
PRC	80,026	43

Since this small amount of legal technology export trade to the U.S.S.R. and Eastern Europe cannot close to fulfilling their technology needs, they must acquire this critically essential technology from the United States by other than legal means. Acquisitions through third countries account for the bulk of Soviet acquisitions of U.S. technology. This includes illegal diversions.

A large number of nations are utilized for transshipments and diversions by both the Soviets and the Chinese. Western Europe appears to be the major diversion point to the U.S.S.R., either directly or via Eastern Europe. The PRC uses Hong Kong extensively for this purpose.

In Western Europe, the Soviets acquire U.S. technology illegally through several key diversion points identified as Switzerland, Austria, and Finland. Not only do these countries maintain close economic ties with the Soviet Bloc, but they do not participate in international Coordinating Committee (Cocom) export controls. For example, U.S. technology legally exported to Switzerland totalled $385.9 million—almost five times the amount that went to the Soviet Union. In fact, in 20 different Commodity Control List (CCL) technology categories, Switzerland was among the top ten destination countries in the world for all U.S. exports of these items. More importantly, 64 percent of all technology exports to Switzerland were key target items.

The situation with Hong Kong is similar. The United States exported technology to Hong Kong in calendar year 1981 valued at $485.9 million, or six times the amount that went legally to the PRC. Moreover, 75 percent of the technology exported to Hong Kong consisted of key target items, primarily in the areas of computer equipment and microelectronics.

To date, there remains very little information within the intelligence and enforcement communities regarding any estimations of the total volume of illegal U.S. technology exports. This problem is only just beginning to be addressed. Therefore, this information must be developed from internal sources.

Illegal critical technology exports were estimated at about $1.6 billion in calendar year 1980 (by the Intelligence Division in January 1982). This figure was determined through the analysis of earlier studies and estimates, as well as limited internal Customs reporting at that time. Data currently available from Operation Exodus, however, in addition to a much more detailed analysis of the legal technology export trade, provides a more refined assessment of this illegal trade.

It is estimated that an additional 23 percent of all exports (of all commodities to all destinations) are done contrary to applicable regulations. This includes technical violations as well as deliberate criminal violations. Actually, the percentage of technology illegally exported with intent to violate U.S. export laws is probably much smaller. One very significant effect of Operations Exodus has been the promotion of increased regulatory awarness within the technology trade community thus reducing a large portion of technical violations made through ignorance or carelessness.

INSPECTIONS

The inspectional element of Operations Exodus to identify and prevent the exportation of critical technology from the United States is the backbone of the program.

Prior to the inception of Exodus little or no inspection of export cargo was performed as shippers have 4 days after the exportation of the commodity to file the Shipper's Export Declaration with the Customs Service. The central idea of Exodus was to examine this cargo and its supporting documentation while it is at the exporting carrier, prior to shipment.

The initial inspectional activities of Operation Exodus were centered around 13 designated ports which were to provide the necessary data to form an assessment of the actual technology loss. Exodus teams consisting of special agents, inspectors and patrol officers were formed and specially trained for the program. Shortly after the placement of the Exodus teams at these ports, several independent export control programs and inspectional teams were established in nondesignated ports. As a

result of the increase in the number of teams and the success of these independent programs (124 seizures), Operation Exodus was expanded in the Spring of 1982, to include these nondesignated ports. By the end of fiscal year 1982, nearly all Customs ports were operating either a full or part-time export control program, depending on the local assessment of the amount and the type of exports through the ports. The total number of Operation Exodus seizures for fiscal year 1982 were 765, in 33 ports, with a total value of over $55 million.

These figures show a marked increase over calendar year 1981 which covered 196 seizures valued at $9 million. This increase is indisputably the result of Exodus. Predictions were made that a Exodus progressed and became public knowledge, the number of seizures would decrease because of the forced compliance on the exporting community. This assumption has proved invalid to date. During the first month of fiscal year 1983 there were 107 seizures valued at over $6 million, which is consistent with the fiscal year 1982 monthly average. This trend will be continuously reviewed.

The inspectional activity of Exodus was also directed toward the enforcement of Presidential Embargoes and Sanctions against Libya, Iran, Cuba, and Argentina for the duration of the Falkland Crisis. Seizures related to these Sanctions totaled 62, or 8.1 percent of the total.

Another aspect of Exodus inspections was the initiation of two "blitz" operations. The two areas subject to the blitz activities were Boston, conducted in June, and the Northwest area (Seattle, Washington; Portland, Oregon; and Blaine, Washington), conducted during September 1982. Although inspection of all exports in a port during a blitz is not realistic, the intensified activities of Exodus teams covered the majority of the exports. Preliminary examination of export documentation was emphasized with actual physical inspection of the shipment whenever questions in description and destination arose. The results of the 2 "blitzes" were: Boston—81 detentions/referrals resulting in 8 seizures; and the Northwest—27 detention/referrals resulting in 7 seizures.

Inspectional procedures and problems

Examination of the export cargo requires scrutinization of all documentation associated with the shipment. Inspectional personnel must review vital data contained on the shipping documents (air waybill, ocean bill of lading, etc.), invoices prepared by the exporter or manufacturer and the Shipper's Export Declaration. By profiling these items in accordance with Exodus team procedures, the detection of suspect shipments can be readily identified and referred for appropriate action.

The exportation of cargo, via air, allows inspectional personnel the opportunity to examine commodities and associated documentation without delay (as opposed to vessel shipments). The Shipper's Export Declaration (SED) must be available prior to exportation of the cargo and is required to be submitted with the outward manifest. Cargo must be available for inspection and related documentation accessible for Customs review.

Vessel shipments, if intended for export, are subject to inspection along with related documentation. Though presentation of Shipper's Export Declarations may occur 4 days after departure of the vessel upon submission with the outward manifest (15 CFR 30.24), the documents must be available for examination by Customs, once the cargo is presented for export. Failure to provide said SED's may result in detention of the cargo until such time that Exodus profiling is accomplished.

Land border exports necessitate the presentation of all documentation prior to departure. Cargo must be accessible for examination by Customs to ensure compliance with all applicable laws and regulations.

BREAKDOWN OF SEIZURES

Commodity	Number of seizures	Total value
Aircraft	1	$2,670,000
Aircraft parts	63	6,236,096
Communications	47	8,111,514
Computers and equipment	290	8,731,033
Electronics parts	120	2,818,386
Electronics equipment	121	4,692,124
Lasers	21	826,245
Machinery	17	615,892
Military equipment	29	3,323,853

BREAKDOWN OF SEIZURES—Continued

Commodity	Number of seizures	Total value
Miscellaneous	20	8,681,133
Oil equipment	25	1,830,380
Strategic materials	2	56,962
Technical data	4	5,808,448
Vehicles	5	1,263,416
Total	765	$55,665,482

Number of seizures: 765 (82 OMC seizures; 625 technology seizures; 58 embargoes and other seizures).

Number of detentions: 2,481.

Ratio of seizures to detentions: 30.83 percent.

Average detention period: 3–5 days.

Statistics such as these will be compiled on a regular basis by the Exodus Command Center based upon monthly reports submitted by the Exodus Port Coordinators.

The more notable of the seizures for fiscal year 1982 have included:

A multispectral scanner seized in Houston, Tex., valued at $500,000, intended for export to the Soviet Union via Switzerland by Land Resources Management, Calif.

Two seizures of sonar parts in Miami, Fla., and at JFK, N.Y., valued at $33,615 and intended for export to Chile by two Chilean front companies, in violation of Office of Munitions Control (OMC) license requirements and embargoes against such equipment being exported to Chile.

Electronic test equipment seized at LA International Airport, valued at $650,000, intended for export to Switzerland by Albert F. Kessler.

A computer and parts valued at $13,200 intended for export to West Germany, which was to be diverted to the Soviet Union. The exporter, American Electronic Supply, Cleveland, Ohio, has been discovered to be a major purchaser/supplier of technology to the Soviet Union.

HEADQUARTERS EXODUS COMMAND CENTER

On January 27, 1982, a national Exodus Command Center was established at Headquarters to maximize the effectiveness of the Exodus inspectional/investigative teams located at key ports of export throughout the United States. The Center is charged with the responsibility of providing operational guidance to inspectional teams in the field. It responds to inquiries for export licensing verifications, and enhances the flow of critical investigative and intelligence information to and from the various Exodus port coordinators assigned at selected domestic locations.

The Command Center provides a centralized location for Exodus inquiries, information, intelligence, and coordination of effort. It is supervised by a Senior Special Agent and staffed by special agents, inspectors, import specialists, patrol officers, and a program analyst. The vast majority of staff personnel are assigned on a temporary duty status with assignments varying from 30 to 90 days. Several special agents have, however, requested and remained for an additional tour of duty. This provides the Command Center with long-term experienced personnel who overlap and train arriving replacements.

The individuals assigned to the Command Center are preferably current members of an Exodus field team at their respective ports of duty and possess a degree of export related experience through field investigative or inspectional assignments. In turn, the TDY staff members return to the field with a well rounded basis of experience encompassing the entire Headquarters Exodus program as it relates to national defense, other Federal agencies, the private sector and overseas.

During their tour of duty at the Command Center, staff members from the Office of Investigations are assigned to the licensing verification units of the Department of State and Commerce, which greatly facilitates the flow of information between those Departments and the Command Center, and in turn, the field. Prior to assigning Customs Office of Investigations personnel at those locations, the burdensome task of verifying export licenses was somewhat overbearing and untimely for inspectional or investigative requirements. By assigning Customs personnel from the Command Center to those locations, the response time to inquiries has diminished and

continues to decrease in direct proportion to the experience of the Exodus Command Center personnel.

Since the establishment of the Command Center, 2,481 referrals for export license verification were processed by the staff members and forwarded to the proper agency for determination and response. This figure represents approximately .6 percent of the total number of licensed exports (approximately 401,167) authorized by the Departments of State and Commerce.

As previously stated there were 765 export seizures during fiscal year 1982 valued at over $55 million. When compared to the fiscal year 1981 export seizures, which totaled 196 and represented $9 million in recoveries, there is a marked increase of successful activity, part of which can be attributed to the centralized Exodus Command Center efforts.

Based on information gleaned from prior and current inquiries, inspections, and domestic or overseas investigations, the Command Center established and continues to develop an extensive resource and information data system which is pertinent and vital to the Exodus program.

The Command Center should be considered a primary source of information concerning any Exodus program inquiry, in addition to being the link between field inspectors, investigators and the proper export licensing unit or overseas investigative representative. This aspect of centralization has greatly reduced duplication of effort in investigative and inspectional matters.

Projected enhancement to the Command Center for fiscal year 1983 includes automated data storage for more rapid response to inquiries and investigative needs, in addition to expanded communication systems for more rapid transmittal of requested investigative or intelligence information.

TRAINING

Prior to the implementation of Operation Exodus in the 13 ports, a Headquarters directed training team was dispatched to each of the selected port cities. Instruction was provided to each of the Exodus teams to include a discussion of the threat assessment, the fundamentals of cargo examinations and provision of a list of commodities most desired by proscribed countries. Also presented was a guideline of suggested investigative steps for export violations. Lists of known diversion countries, known or suspected violators and target commodities together with U.S. munitions list or commodity control list numbers were also provided to the team members. Further, the teams were provided information concerning the Exodus Command Center, which was established in Customs Headquarters to provide coordination to the Exodus teams and to facilitate license determinations.

As Exodus expanding during fiscal year 1982 to include additional ports which had not been initially designated, printed training material was forwarded to the export control teams in these ports for their localized training.

As a result of the 27 additional Port Coordinators positions being established late in fiscal year 1982, a training program for the coordinators was formulated. Early in fiscal year 1983, a week long symposium was conducted for all the Exodus Port Coordinators. This symposium includes presentations on Department of Defense liaison, Department of Commerce liaison, etc., in addition to those topics presented in the original training. The original topics were enhanced based upon the additional information obtained during the first year of Exodus.

STAFFING

Prior to the initiation of Operation Exodus, Customs devoted a minimal amount of personnel to enforcing the Export Administration Act. With the advent of Exodus, the Commissioner of Customs directed that 49 special agents, 35 Customs inspectors, 34 Customs patrol officers, 5 import specialists and 2 analysts be assigned to the program.

The 1982 supplemental appropriation provided funding for 292 positions to be devoted full-time to Operation Exodus.

Following a detailed analysis of locations most prone to have export violations, the Commissioner distributed the following positions to the field: 72 Customs inspectors, 34 port coordinators, 41 special agents, 14 import specialists and 11 investigative aids. Thirty positions were distributed at Headquarters to the Office of Inspection and Control and the Office of Investigations to support field operations, provide training and distribute intelligence to the field. As of November 29, 1982, most of these positions were filled. In addition to the positions specifically designated for Exodus, a number of the field managers are using other personnel to support the program.

In late fiscal year 1982, the staff of the Customs Attache, Bonn, Germany, was increased by three special agents and one clerical position. In fiscal year 1983, we anticipate an increase in the staff of other foreign offices in support of Operation Exodus.

BUDGET

Prior to the inception of Operation Exodus, the Department of Commerce provided reimbursement funds for the enforcement of the Export Administration Act in the first 10 months of Operation Exodus, the cost of enforcement activities was absorbed within the Customs Service budget. With the implementation of Operation Exodus, the Department of Commerce withdrew all funding for export enforcement.

On July 18, 1982, the President signed Public Law 97-216, establishing $8 million in supplemental funding for the Operation. This provided reimbursement funding for those expenses that had already been incurred to include 292 additional positions, technical equipment needed to support the program and travel money for blitzes.

The same level of funding is planned for fiscal year 1983. In addition, Customs is currently requesting a fiscal year 1983 supplemental appropriation of $31.5 million to cover Exodus staffing, which would include an additional 80 positions. This funding would also cover covert operations, funding for blitzes, procurement for technical and nontechnical equipment, etc. Another proposal calls for the Department of Defense to provide $30 million in funding for Operation Exodus. If either of the last two proposals are approved, Exodus funding will be substantially increased above our current $8 million, allowing for the expansion of the program into areas that are not now currently feasible. Only one of these two proposals will be allowed to materialize.

EXODUS EQUIPMENT PROCUREMENTS

During the fourth quarter of fiscal year 1982, Customs received a supplemental appropriation which allowed us to provide technical and operational enhancements at both our Headquarters and field operations level. These procurements, which are delineated below, will provide us with the ability to conduct Exodus operations in a more secure atmosphere while protecting the integrity of our information:

No. and item	*Cost*
1. 30 mobile surveillance/command centers	$990,000
2. 55 secure telephones (Parkhill)	440,000
3. 40 inspectional vans	460,000
4. 5 secure teletype systems	150,000
5. Command Center equipment	160,000
6. 340 digital voice privacy radio systems	2,216,374
Total	4,416,374

INTELLIGENCE

Background

Prior to the inception of Operation Exodus, intelligence gathering for the Customs Service was handled by the Intelligence Support Staff (I.S.S.). The information obtained by this division was recognizably lacking in areas of high and critical technology as well as the ever expanding computer related industries.

With the inception of Exodus on October 1, 1981, there existed a void in intelligence that required an immediate fulfillment without detracting from the manpower and programs of I.S.S.

Exodus Intelligence was formed with its primary function as an aid to the field in criminal prosecutions. It directs its efforts to identify U.S. companies and individuals in violation of U.S. laws.

Implementation

With the formation of the Exodus Command Center in January 1982, two agents of the Office of Investigations were assigned to Intelligence on a full-time basis. As Exodus grew, so, out of necessity, did the liaison with the Intelligence Community. It became obvious that tactical and operational intelligence was critical to prevent the massive flow of American technology to foreign powers. Contacts within the Intelligence Community were renewed, cultivated, and expanded by Exodus personnel.

This activity enhanced Customs reputation as a leading organization in combatting technology transfer problems.

Operations

The Exodus Command Center Intelligence Section is presently comprised of two special agents and an analyst from I.S.S. Their function is to analyze all cables and messages distributed to U.S. Customs Headquarters from Embassies, other enforcement agencies, Customs Attachés, and the Intelligence Community. These individuals also review all Memorandums of Information Received and Reports of Investigation that pertain to export violations. Record checks are made on known or suspected violators, as well as checks with the indices of other agencies. Intelligence alerts are then broadcast to specific offices, or to the field in general, concerning possible violators, the means of illegally exporting items and commodities targetted for illegal acquisition. In addition, messages are sent which provide guidance and information as it pertains to the imposition or relief of Presidential sanctions and embargoes against various countries.

A team of two special agents and an Intelligence Division (ID) (formerly I.S.S.) analyst are assigned to the Department of Commerce, Office of Export Administration, Analystical Section. In a coordinated effort with Commerce employees, these Customs employees provide license history records, information on suspect validated export licenses, and violator intelligence to the Exodus Command Center Intelligence Section, which can be utilized by field Exodus teams.

Special agents are also assigned to the Office of Munitions Control (OMC), Department of State. The agent's functions, as previously discussed, are to obtain license determinations from OMC licensing officers and to gather available intelligence to be broadcast to the field through the Exodus Command Center.

Liaison was initiated on an informal basis with a follow-up formal presentation to the executive management of the respective agency. Invariably, at the conclusion of the formal presentation, the agency executive(s) pledged the agency's support of Exodus and immediately provided a point of contact. Through this method, the following liaison contacts were established:

Central Intelligence Agency; National Security Agency; Federal Bureau of Investigation.

Department of Defense; Office of Export Control; International Programs and Technology; International Threat Center; Joint Services Operation Center, (RDF), Fort Bragg, N.C. and Defense Intelligence Agency.

Defense Logistic Agency; Defense Property Disposal Service; Defense Criminal Investigations Service.

Department of the Army; Foreign Disclosure Branch; Criminal Investigations Division; and 902 Military Intelligence Group.

Department of the Air Force; Office of Special Investigations.

Department of State; Office of Munitions Control and Office of East-West Trade.

Department of Commerce.

Although the present liaison program is extensive, further liaison contact is anticipated during fiscal year 1983 with the Department of the Navy, the National Aeronautics and Space Administration, and the Department of Air Force contracting offices. These contacts will enhance the flow of intelligence between both agencies, provide technical expertise to obtain required specifications for detained shipments and provide capabilities to verify whether Munitions List items being exported are valid exports under Foreign Military Sales, or commercial sales under property disposal lists.

The primary objective of the Operation Exodus Intelligence Section for FY 82 was to compile sufficient data to formulate a valid threat assessment of the export control problem. The secondary objective was to disrupt both overt and clandestine organizations, whose aim is to circumvent U.S. export laws, by seizing shipments and ensuring criminal prosecution of the violators.

The Intelligence Section accumulates, reads, evaluates and stores an average of 150 to 200 pieces of intelligence from outside sources per week. This does not include U.S. Customs reports or referrals, but rather information from CIA, FBI, AFOSI, DOD, State Department, and Commerce referrals.

As the result of intelligence either received from the Intelligence Community, developed through confidential sources of information, or received from other concerned agencies, as well as leads developed from Exodus team inspections/examinations and the efforts of special agents in the field, a number of significant investigations of export violations have been initiated or culminated.

Operational needs

No operation, especially one as large and rapidly expanding as Operation Exodus, is without the problems inherent to any expansion, namely equipment necessary for efficient operations.

In the area of intelligence, two major problems have been encountered. These are the lack of necessary equipment to transmit classified information to appropriate Office of Investigations offices in the United States and the problem of disseminating pertinent intelligence to the field which has been received from the intelligence community.

The problem of the lack of equipment has been addressed, and the purchase of the required equipment is planned in fiscal year 1983.

The problem of disseminating intelligence to the field which has been received from the intelligence community is to be addressed in fiscal year 1983. At present, in order to disseminate the intelligence, the originator of the intelligence must either downgrade the information so it may be released for appropriate action by the field or sanitize the critical information to preclude the identification of the source. Secure communications equipment which can be used to transmit classified information may help eliminate this problem.

At present, information is being handwritten on 3x5 cards and manually indexed and stored. Case filing is also done manually. A computerized index system would greatly enhance the retrieval of information.

Another aspect of the intelligence program for Operation Exodus during fiscal year 1983 will be the implementation of an Intelligence/Information Bulletin. This publication will be forwarded to all branches of Customs periodically in order to provide the status of Exodus, significant results of the operation and pertinent information that may be used by the field. Information from all aspects of Exodus and the Intelligence Division will be consolidated in this publication.

Since the inception of Exodus, Customs has made the transition from a receiver of intelligence from the community to also being a source of information. Because of this transition, a senior analyst from one of the agencies within the intelligence community has been detailed to Headquarters to review the data collected through Exodus.

INVESTIGATIONS

The prime objective of Operation Exodus is to disrupt the flow of U.S. technology to the Warsaw Pact and its allies. To achieve this objective it was clear since the outset of the program that qualify investigations of willful export violations must be undertaken to disrupt criminal activity, utilizing a host of criminal statutes as well as civil sanctions. The Warsaw Pact acquires Western technology through both legal and illegal means. For the most part, the illegal acquisition depends on the assistance of U.S. and foreign firms that are willing to engage in profitable impropriety. It is these U.S. firms, individuals and foreign companies who engage in complex criminal conspiracies to supply the Warsaw Pact with unlicensed high technology items which are the targets of our investigative efforts.

Investigations are initiated in numerous ways including, but not limited to, information from confidential informants, intelligence from the law enforcement community and foreign governments, routine examination of exporters records, covert "sting" operations whereby undercover agents and informants provide a mechanism for willful violators to achieve their goals, and through identification of high technology items which have been disguised as commercial items requiring no special licensing.

The more sophisticated the criminal organization is, the more sophisticated our investigation must be, to include electronic surveillance and extensive use of the grand jury system and the inherent subpoenas often necessary for the production of records and witnesses. The utilization of criminal search warrants has become one of our most effective investigative tools allowing for the procurement of evidentiary records before the criminal organization has the opportunity to obstruct justice by destruction or sanitization of same.

The infancy stage of Operation Exodus which encompassed fiscal year 1982 resulted in the successful completion of thirty-three (33) criminal investigations for conspiracy violations of United States neutrality and/or export control statutes and regulations. To date, these investigations have produced seventy (70) convictions. At the close of fiscal year 1982 there were twenty-two (22) active investigations involving forty-seven (47) potential defendants. Reorganization of the Headquarters staff into a Strategic Investigations Division, producing an increase in operational intelligence provided to field special agents and port coordinators, should increase the

number of investigations and subsequent criminal prosecutions significantly during the next fiscal year.

An expanded investigative force for our foreign offices should enhance the exchange of information between foreign law enforcement agencies and our Customs Attaches, which should impact very heavily on an increase in quality investigations. Additionally, we anticipate approximately three million dollars ($3,000,000) to be budgeted for covert operations during fiscal year 1983, which will allow us to target the most sophisticated of criminal organizations.

Attached to this report are summaries of several significant investigations which took place during fiscal year 1982. Much of this information remains sensitive pending judicial outcome, thus no publicity is warranted on these cases at this time (one exception noted).

CRITICISM OF OPERATION EXODUS

The CHAIRMAN. Thank you, Commissioner. Criticism has been made of Operation Exodus with regard to shipments that have been excessively delayed. Committee staff has obtained a copy of an agency memorandum which states that the problem primarily exists here in Washington, and twice as many delayed licensing determinations are delayed awaiting Commerce Department determination as are being delayed in the field by Customs inspectors.

Would this be a fair evaluation of the situation?

Mr. VON RAAB. In order to evaluate the situation, you have to understand it. And if you will permit me, I will try to explain briefly what happens.

An inspector in the field, a Customs inspector, either because of information that he has been provided by either the Commerce investigators or through our own investigative service or through a review of documentation accompanying a shipment or because he has actually looked at a particular shipment, will detail a shipment.

That simply consists of slapping a big dayglow orange tag on it that says "Warning, this shipment is being detained by the Customs Service."

As soon as he has made this detention, he contacts our Washington Headquarters Command Center and informs them of a number of details with respect to the shipment, the exporter, the manufacturer, the description of the goods, as much as he is able to provide at the time.

He then, through the port coordinator, informs the exporter and the other individuals who might have an interest in the shipment. Two or three times a day, couriers leave the Customs Service for the Commerce Department and take with them information on detentions that were made a few hours before.

These requests to the Commerce Department are then taken to the Export Administration Office. I have all the names if you are interested, but basically, they are taken to the licensing officers for determination as to whether a license is necessary in the particular case.

It is not as easy to figure out whether a license is necessary for a particular shipment as it is to make a detention. Often rather detailed and complicated specifications are necessary to be pulled together by the Commerce Department before the Commerce Department can inform and agree with the Customs Service that the detention should either be released or seized.

And the difficulty in this system which is one that is very difficult to overcome comes in the determination within the Commerce Department as to whether the detention should be released or it should be seized. And that is necessarily a difficult process.

Therefore, it is fair to say that most of the holdup with respect to any detentions would be in the Commerce Department because that is where the most difficult work in terms of the analysis must be made.

So I answered your question yes, but I think it is important that you understand it doesn't necessarily mean bad work or incompetence is present; it is just a difficult job.

The CHAIRMAN. Does Customs currently have ready and broad access to the following Commerce files: Licenses denied or returned without action; license applications granted; licensing screens; intelligence/investigative files?

LIMITED ACCESS TO COMMERCE FILES

Mr. VON RAAB. We have access to Commerce files on a case-to-case basis. In other words, if we make a specific request on a specific name, they will give us that particular information that we request on that item. We do not have general access to the files.

Therefore, the information that is made available to us is information that we must request with some specificity. So from a very parochial standpoint, the Customs Service would like to have broader access to Commerce information because we really cannot make a good investigation out of the files that they have and really can only use it to supplement information that we already have developed.

The CHAIRMAN. Is there any reason why they don't give you broader access?

Mr. VON RAAB. As Secretary Olmer indicated, this information is protected under section 12–C because it apparently contains some business confidential information that in the opinion of the legislators needs to be protected.

We personally believe that we should be able to have more general access to this and do not believe the use to which we would put it would in any way cause a problem. We don't have this problem with the State Department in terms of their files, and we have on many occasions requested that our access to the Commerce information and files be broadened, but we have not been successful in obtaining them.

The CHAIRMAN. It is my understanding that Justice has ruled that 12–C applies not to agencies, but to outside.

Mr. VON RAAB. I have the same understanding they have made a determination to that effect.

The CHAIRMAN. Commerce is not willing to abide by that?

Mr. VON RAAB. Commerce has, the Secretary has, given a blanket approval to the release of information to other enforcement agencies, particularly Customs. Unfortunately, the blanket approval must go through the hierarchical channels within the Commerce Department. And those officials have made a determination that it will only be released on a case-by-case basis.

So the Secretary's determination could be viewed as one that gives a broader access than we have, but the way it is actually being handled right now, it is on a case-by-case basis.

The CHAIRMAN. If criminal enforcement of the Export Administration Act were delegated to the Customs Service, would it make any difference to the success of your operation whether the licensing agency were Commerce or a separate agency?

Mr. VON RAAB. I would have no position on that. I don't see that it would make any difference.

The CHAIRMAN. I assume the Customs Service conducts Operation Exodus in conjunction with the Office of Export Enforcement in New York, Los Angeles, and San Francisco. Would you describe the Commerce Department's participation in enforcement activities in Miami, New Orleans, Houston, and Norfolk?

Mr. VON RAAB. I really don't have any information personally on the character of the Commerce Department's enforcement operations anywhere except at Kennedy Airport. I am unaware of what the organization or the personnel or the activities of the other Commerce Department enforcement efforts are around the country.

The CHAIRMAN. Well, the point is that Commerce doesn't have any in those areas. And it seems to me that those cities are rather important cities.

We got into this before, whether they were on the west coast or not. We didn't talk about Miami, Norfolk, New Orleans, and Houston. So I think it just once again points out the inadequacy of Commerce's enforcement. No matter how much they plead they are doing better, they are still not doing well. I think that is evident.

And these are areas that certainly should be taken into consideration, not just JFK. Everybody that wants to steal something or to take it out illegally will not just route it through JFK for the convenience of Customs and Commerce because that is where they happen to be.

Senator Lautenberg, do you have any questions?

Senator LAUTENBERG. Just very quickly, Mr. Chairman.

Mr. von Raab, in Mr. Olmer's testimony he said he thought the enforcement ought to be continued in Commerce, because of the collocation of functions. He said it was vital they have the facility—obviously, I am paraphrasing a little bit—both to review the material and to get on with the enforcement job.

You just said regarding the period of detention of cargo outbound, that a lengthy detention is created by the holdup in Commerce in terms of getting information over to you, you said you needed to——

Mr. VON RAAB. I would like to correct that. Customs does not make a licensing determination.

Senator LAUTENBERG. I understand.

Mr. VON RAAB. Therefore, the decision has to be made within the Commerce Department. And I am trying also to say it is not necessarily a holdup. It is often very difficult to make these decisions, but it is a Commerce decision whether a license should or should not accompany the shipment.

Senator LAUTENBERG. I understand the language may be loose, but the direction, I assure you, is where I want to go. The Com-

merce Department argument about collocation of functions seems to be fortified a little bit by what you just said.

TRAINING COMMERCE INVESTIGATORS

Is there an opportunity to train their people in the investigatory process rather than perhaps training some of your people in the comprehension of matters related to licensing?

Mr. VON RAAB. Well, the five or seven inspectors at Kennedy Airport, I believe, were actually trained by the Customs Service. The training is, at least for a while has been, running the other way. The new set of investigators have been trained for the most part at the Federal Law Enforcement Training Center in Glynco. And they have then gone through at least fundamental training, the very same training, that the Customs investigators go through.

So the peculiar aspects, the arcane aspects as it were, of the export control laws in my personal opinion are less important to an investigator than whether he has the tools necessary to make him a professional criminal investigator. Criminal investigators are accustomed to investigating many types of issues. Although it certainly doesn't hurt to have someone specialize in one particular type of investigation or another, the important thing is that you have professional, experienced investigators.

From that standpoint, I would mention that we have recently received funding through the Defense Department, although it was put into our budget with the permission of the Congress of the committees of Congress, some $25 million with which we are funding 292 positions, about one-half of which are criminal investigators who will be devoted 100 percent to this activity.

That is, to put it in bureaucratic terms, their job description requires that they only perform exodus investigations. So what we have is basically a cadre of approximately 100-plus criminal investigators who work nothing but exodus, plus some 600 other investigators who work exodus and other Customs criminal investigations.

To put it roughly, I would say that approximately one-third to 40 percent of our criminal investigatory force is involved most of the time in these export investigations.

Senator LAUTENBERG. Thank you.

I was a Commissioner of the Port Authority of New York and New Jersey——

Mr. VON RAAB. I hope we were good to you.

Senator LAUTENBERG. The Port Authority has jurisdiction at Kennedy Airport. Your people did a very good job.

The CHAIRMAN. Thank you, Senator.

Commissioner, thank you. I have some additional questions for you that I will submit for response in writing.

And we appreciate your testimony.

Mr. VON RAAB. Thank you very much.

The CHAIRMAN. Thank you.

I would now ask Mr. Thau and also Inspector General Funk if they would both come to the witness table.

Gentlemen, thank you very much. We appreciate your willingness to testify, and we will try to make it as painless and brief as possible so your hunger pains will not be great.

Mr. Thau, would you like to begin?

STATEMENT OF THEODORE L. THAU, SALINAS, CALIF.

Mr. THAU. Thank you very much, Mr. Chairman.

As I listened to questions put by you and other Senators, so many thoughts came to my mind, from my years in the Commerce Department, of information that might have been supplied to you and them, to be helpful. But, unfortunately, the people who were testifying knew nothing about the background and, therefore, couldn't really zero in on what I believe were the matters of concern to the Senators.

With respect to questions asked by the Senator from Florida, I remember that there were periods, sir, when Customs and Commerce export control personnel had very good working relationships, for a long period of time in the investigative field, as well as in the inspectional field. I don't say that, just because something in the past happened, therefore, we should look at it. If something worked in the past, however, we ought to find out why it worked well then, and what went wrong, and try to prevent things from going wrong again.

SHARING INFORMATION

In regard to the point made by the gentleman from Customs about the problem experienced with the Secretary's blanket determination, frankly, sir, I was rather surprised and shocked that, after so many years, since 1949, when the Export Control Act's confidentiality provision was first adopted, sometime along the line, a question should have arisen as to whether that provision requires a specific authorization from the Secretary for Commerce to share information in the enforcement area with the other U.S. Government agencies doing work with Commerce in that same field.

You know, there are Supreme Court decisions declaring that an administrative agency's interpretation of a statute, which has been consistently applied over a long period of time, and which has not been challenged by Congress, has the force of law, and should be understood and accepted generally as the well-settled interpretation.

In the 13 years that I was in charge of the legal side of enforcement of export controls in Commerce, we shared information with Customs and with all the other agencies concerned with helping us enforce this law. And we did not feel that the statute was to be construed as requiring specific or blanket findings and determinations by the Secretary for that purpose.

And, when I changed jobs in 1961, and took on the triple job of being Executive Secretary of the Cabinet-level Export Control Review Board and of the Advisory Committee on Export Policy, and chairman of the Operating Committee, we shared with the State Department and the Defense Department and all the other agencies that were advising us, every license application that had trade confidentiality data in it. We didn't feel that the Secretary had to make determinations to permit such disclosures.

It would be interesting, considering the issue of conflict between trade promotion and trade control that is of concern to the mem-

bers of this committee, and to other Senators as well, to inquire when the question of the requirement of secretarial determinations first surfaced, who initiated the question on sharing information, with Customs and others, and whether it was motivated by a concern to protect the business community against intrusions from Government.

I have the feeling that this kind of consideration may have led the lawyers and others to throw aside the 20 some years of settled administrative interpretation of the statute, which maybe they didn't know about or wish to ascertain. The provision had not been changed in the 1969 law, and I don't believe the language was changed in the 1979 law.

You have my written statement. As Senator Proxmire has indicated from his questions, I guess you folks have read it. Therefore you know how I feel about the question before you, and why I feel that, even with men of the highest integrity and the keenest sensitivity to the delicate issues of balancing trade promotion and trade control, who you might find and put in charge at Commerce it wouldn't work. It could only last while they were there. Once they left, things would go back to the status quo ante at Commerce, just as the reforms referred to by the Under Secretary that have now been undertaken and are being promised are likely to do.

Sir, it was like deja vu for me to hear the Under Secretary testify of changes made and to be made. It was like the more things change, the more they remain the same. I have heard similar testimony from Commerce officials, not once, not twice, but three or four times, in the last 35 years.

There have been 20-some investigations by Congress of export controls, as administered by Commerce. I don't think that record can be challenged by any other Government Department. And, most of these investigations have involved oversight, demands to change Commerce's ways, for its officials to stop being trade promotors day in and day out so far as the export control program is concerned. I have indicated in my written statement that several congressional committees, at different times, have said, "Take export controls out of Commerce; they don't belong there."

WEARING TWO HATS

But to get back to the difficulty of wearing two hats, even for officials of great sensitivity, of great integrity. The written answer that Mr. Olmer gave to the report of the Inspector General of Commerce contained one statement that I think stands out as an indication of how important it is to have sensitivity at every moment of time, and how one can so easily go away from sensitive thinking, when one has to wear the two hats of trade promotion and trade control, as Mr. Olmer must do.

I refer to the statement in Mr. Olmer's answer to Mr. Funk's charge of a perception of conflict of interest in Commerce, that no harm can come from wearing the two hats because Commerce officials are obviously only concerned to promote exports of a lawful nature—of a lawful nature.

Now, that would be a very good answer to you and anyone else, if somebody other than Commerce defined what is an export of a

lawful nature. But the commerce Department itself defines what is an export of a lawful nature. Their officials define what is lawful, and what is unlawful, which commodities may be exported lawfully, and which ones require validated or general licenses. In making such definitions they are as much affected by their conflicting interests as in granting and denying licenses.

So they are asking to be judges in their own case. This is a "lifting-ourself-by-his-own-bootstraps" type of argument, and it begs the question.

You need here, sir, the kind of administration that can be found only in an Agency like the Securities and Exchange Commission, an independent Agency. Let Commerce come to that Agency and argue for trade promotion. Let State come in and argue foreign policy. Let Defense come and argue national security. Let the business community even come in. But let an administrator who has only an eye to the carrying out of the Export Administration Act be the one who makes the final decision.

That's what I wish to say most briefly, on this subject. I am ready to answer your questions, if I can.

CONFLICT OF INTEREST AT COMMERCE

The CHAIRMAN. Thank you very much. And we will include your entire statement in the record.

I will just briefly summarize it, though you have done it very articulately yourself. But there are three questions you answered. And I want to make sure they are not just spread through the record, but that they were definitely highlighted.

Is there a conflict of interest between the trade promotion duties of the Department and its duties to control exports under the Export Administration Act of 1979?

Your answer: Yes. I believe there is and always has been such a conflict.

And also on the record, I would like to make sure that it is indicated that your testimony is coming from a man who spent 35 years, more combined experience in the area than all the other witnesses we have put together. You are now speaking from the outside, but as a former insider for all of those years in the Department of Commerce.

Mr. THAU. I assure you I wasn't eased out; I wasn't fired for whistle blowing. I have not gone into the export consulting business. I have no axes to grind. I have retired to California to enjoy my remaining years of good health. But this matter concerns me.

The CHAIRMAN. I know you are not a whistle blower. That was Larry Brady 2 or 3 years ago, and he was forced out.

But your second question is: "Is that conflict so real and pervasive as to prevent Commerce from carrying out its export control duties properly?"

"Yes."

It is unusual to get such direct answers from someone at Commerce.

"Is the proper remedy the transfer of the administration of the 1979 act from Commerce, to a new independent agency, to be created by Congress and called the Office of Strategic Trade?"

"Yes."

The rest of your testimony then amplifies the reasons for your three very direct and specific answers.

[The complete testimony of Mr. Thau follows:]

STATEMENT OF THEODORE L. THAU, A RETIRED COMMERCE DEPARTMENT OFFICIAL

Chairman Garn and members of the Senate Committee on Banking, Housing and Urban Affairs, you have asked me to testify on the ability of the Commerce Department to carry out adequately the provisions of the Export Administration Act of 1979, basing my statement on my 26 years in the export control area of that Department, and particularly on my 11 years as Executive Secretary of the Export Control (Administration) Review Board and of the Advisory Committee on Export Policy, and as Chairman of the Operating Committee.

I am honored by your invitation. In accordance with your procedures, I will orally summarize this statement, and then try to answer your questions.

By way of background: I came to the Commerce Department in the spring of 1948, after a number of years of law practice in Chicago and New York City, as well as five years with the Securities and Exchange Commission, as Special Counsel and Assistant to the Solicitor. I was one of a small group recruited by Commerce to develop the system of export controls that would be needed, in the Cold War, just begun, to make sure that strategic goods and technology did not get to the USSR and its then satellites, directly or indirectly. Thereafter, for 13 years, until mid-1961, I was in charge of the legal side of Commerce's export control enforcement program. This broad set of responsibilities brought me in close contact with high level Commerce officials, including every Secretary from Charles Sawyer to Frederick Mueller, as well as high officials of State, Defense, Treasury's Foreign Assets Control, Customs, and Justice.

In mid-1961, the new Secretary of Commerce, Luther Hodges, offered me the three combined positions of Executive Secretary of the newly-created Export Control Review Board (a Cabinet-level body established by President Kennedy's Executive Order), and of the subcabinet-level Advisory Committee on Export Policy, and the Chairmanship of the senior staff-level Operating Committee. I held those positions until mid-1972, when I decided to retire from government service. I was the first person to be Executive Secretary of the Export Control Review Board, and I held that post and the two preexisting ones for 11 years, longer than any person before or since. Despite retirement, until mid-1974, when my wife and I moved to Salinas, California, I was called back by Commerce for several extended assignments, as Consultant to the Director of the Office of Export Control, to prepare a special to Congress; as Acting Export Control Hearing Examiner; and as Acting Chairman of the Department's Board of Contract (and other) Appeals.

Since 1974, I have sought to follow the Department's work in the export control field, through the press, the Department's published reports, and such Congressional hearing records and reports as have come to my attention. I first learned of this proposal before this Committee in 1980, as the result of inquiries then put to me by the Controller General's office about certain occurrences during my tenure.

Looking back over the past 35 years, as you have asked me to do, I would answer the three questions I understand you have, in this way:

1. Is there a conflict of interest between the trade promotion duties of the Department and its duties to control exports under the Export Administration Act of 1979? Yes. I believe there is and always has been such a conflict, for reasons I will go into below.

2. Is that conflict so real and pervasive as to prevent Commerce from carrying out its export control duties properly? Yes, I believe there is, for reasons to be given below.

3. Is the proper remedy the transfer of the administration of the 1979 Act from Commerce, to a new independent agency, to be created by Congress and called the Office of Strategic Trade? Yes, for reasons to be given below, and because my experience in the Securities and Exchange Commission leads me to conclude that regulatory and investigative responsibilities over an area of business activity—and by regulatory I include licensing—are best given to an independent agency wholly and solely committed to carrying out such functions, and not to an Executive department wholly or substantially concerned with non-regulatory, promotional functions of a different or inconsistent nature. Just as I believe no one would seriously consider transferring the duties of the Federal Trade Commission to the Commerce Department, so I believe there should be general recognition that the public interest

would be better served by transferring administration of the Export Administration Act of 1979 to a new, independent regulatory agency. (I realize that an independent agency can in time become a captive of the industry it is intended to regulate and that an unsympathetic Executive can nominate unsympathetic persons to head it and provide reduced budget support for its operations. But I am still of the belief that Congress can, when it wishes, counteract such weakening tendencies.)

I turn now to my reasons for my affirmative answers to the foregoing questions.

I came to Commerce in 1948, in the midst of an investigation of Commerce's administration of export controls by the Senate Committee on Expenditures in the Executive Departments and the Special Senate Committee to Study the Problems of Small Business. They had uncovered numerous delinquencies in export licensing and, as well, in the investigation and prosecution of widespread violations by businessmen, in the latter respect much like the conditions described in the Commerce Inspector General's report of June 1982. Insufficient and inadequate personnel in the Department's Office of International Trade, as well as insufficient appropriations, were found to be a cause. At that time Commerce had been administering export controls about 2½ years, under an Executive Order issued shortly after Japan surrendered. During the War export controls had been administered by independent, wartime agencies, first the Board of Economic Warfare, and then the Foreign Economic Administration. At the war's end export controls were deemed likely to be needed only about a year or so, and then only to allocate scarce civilian goods not needed here, among the many needy foreign countries. Commerce was to see that export licenses were issued in such way as to deal fairly among US exporters, newcomers and veterans as well as established businesses, and fairly among the foreign countries. But it turned out that Commerce's experiences as the nation's salesman, promoting American exports, were insufficient for making it a good judge of human nature. Commerce officials had apparently not realized that its export licenses would be valuable documents, and that its loose procedures and practices would inevitably tempt unscrupulous persons to become exporters, exploiting the licensing system for their own gain. The Committees' report detailed Commerce's failures, and the corrective measures it had and was going to take. The report expressed concern that if Commerce had difficulty enforcing relatively simple short supply controls, how would it be likely to cope with the much more difficult problems certain to arise in the course of carrying out national security and foreign policy export controls in the Cold War which had shortly before commenced? How would it be able to prevent unlicensed exports, and the diversion and reexport of strategic goods from their licensed free world destinations to unfriendly ones?

One of the recommendations of the Senate report was that the export control Compliance Branch should be removed from its then position as an element of the Export Licensing Division, several echelons below the top of the then Office of International Trade, which had jurisdiction over the Department's foreign trade promotion functions and its export control operations. (The situation then was very much like that described by Commerce's Inspector General in his June 1982 report.) The Senate Committees' report recommended that the Compliance Branch should be made an independent unit directly responsible to the Director of the Office of International Trade. The proposal was tried a short while, but it did not work, for a reason that has bearing today on the basic issues before this Committee. The Export Licensing Division was large and important, dealing daily with businessmen in the generally pleasant setting of export licenses. Its head was widely and favorably known in the business community. The Director of the overseeing Office of International Trade also had numerous and daily contacts with members of the exporting community, as part of his trade promotion duties, and he and the licensing division's head could properly take pride in their good relations with businessmen in all parts of the country. In that pleasant atmosphere, the head of the Compliance Branch and his agents could only be like bulls in a china shop. Their sole reason for reporting to the Office Director was to report suspected violations by businessmen and mistakes (and sometimes worse) by licensing officers—neither of which was a pleasant subject for the Director of the Office or the head of the licensing division. It was soon found that the Office Director really did not have time to supervise the Compliance Branch properly, and it was returned to the jurisdiction of the head of the licensing division.

My new posts in Commerce, in 1961, were related likewise to a context of ongoing Congressional investigations. One was the Senate Judiciary Committee's investigation of Commerce efforts in 1960–61 to license exports of Bryant miniature ballbearing grinders to the USSR, as well as other machine tools to the Soviet Union and Eastern Europe in that period. The other was the extensive and protracted investigation by the House Select Committee on Export Controls of many aspects of Com-

merce's administration of such controls over a number of years. One stated subject of that Committee's inquiry was "Whether or not the Export Control Act of 1949 is being administered by the appropriate department of the Federal Government." In their report the Committee concluded: "The traditional concern of the Department of Commerce is the facilitation and expansion of trade rather than any policy of control or restriction. The administration of the Export Control Act of 1949 by that department since its adoption has created a paradoxical situation—control of trade on the one hand and expansion on the other. The Select Committee is not convinced that the desire to promote trade did not influence the Department of Commerce to be more liberal in borderline transactions."

It was in this setting that I undertook my new duties. I reported directly to Secretary Hodges and Assistant Secretary Behrman, although for budgetary reasons my housekeeping needs were to be met by the Bureau of International Commerce which carried out both the trade promotion and export control functions of the Department, a circumstance that created problems for me later on, after 1969. My principal duties were to bring before the Secretary and Assistant Secretary my findings and recommendations on all export license applications and policy problems brought before the Operating Committee by the Commerce member (representing the export licensing office), or by the members from State, Defense, Treasury, Interior, Agriculture, the AEC and NASA, who were also there to advise on matters presented by the Commerce member. It was their information, advice, and objections that I brought to the attention of these highest level Commerce officials, together with the intelligence inputs I received in the Committee from its CIA advisor.

I did not consider myself bound by the Commerce member's recommendations, or even obliged to tip the scales lightly in favor of his license approval recommendations in borderline cases. Instead, I found myself free in every instance to give the Secretary and Assistant Secretary, in writing, my candid conclusions and recommendations. When I had any doubt or uncertainty of a factual or other nature, I was free to seek to have it resolved before sending the case forward. On such important questions as the foreign availability of comparable equipment I sought to keep in mind the Senate Committee's criticism that Commerce people had a tendency to tip the balance in favor of approval when weighing incomplete and not always clear information about such foreign equipment.

My recommendations being voiced orally at Committee meetings, if any member from another department disagreed, his agency's views were also brought to the Secretary's attention, and it was his practice in such cases to require the Assistant Secretary to call a meeting of the subcabinet level Advisory Committee on Export Policy to try to resolve the dispute. Its members were representatives of the same agencies, of the assistant secretary or equivalent rank. My duties, as Executive Secretary of that body, were to prepare its briefing papers, record its discussions, and report its conclusions to the Secretary. If they agreed, the Secretary would take the case for decision. If they disagreed, the Secretary would instruct me to prepare the case for the cabinet-level Export Control Review Board where I, as Executive Secretary, would follow the same procedures as before. If the member Secretaries of Commerce, State and Defense, and the heads of other interested departments, agreed, the Secretary of Commerce would decide the case accordingly. Otherwise, he would send it to the President, where the matter would be finally decided, at times with National Security Council advice.

This procedure, though cumbersome, had the virtue of keeping the Secretary of Commerce and his Assistant Secretary informed and involved on a regular basis about the most important and potentially troublesome export license applications and policy problems coming before the export licensing director and his Bureau of Foreign Commerce superiors. Moreover, the number of license applications coming before even the Operating Committee were considerably less than 10 percent of those processed by the export licensing office. Established policy guidelines formulated with interagency committee approval enabled the licensing officials to approve or deny over 90 percent of them, on the basis of factual and intelligence analysis which license officers would make, with or without other agency consultation, as their good judgment might dictate. As for the Secretary and Assistant Secretary, I believe their involvement in the hard decisions of export control and their consultation with other departments about those decisions helped very much to counter their normal biases toward trade promotion engendered by their past activities and their duty to carry out Commerce's charter responsibilities of fostering, promoting and developing the foreign and domestic commerce of the United States. This was the practice followed during the tenures of Secretaries Hodges, Connor, and Trowbridge by those officials and their assistant secretaries, though, of course, their ex-

ample was not and could not be followed at levels below them, for reasons I will give below.

After 1969, the situation changed considerably, even as to the roles of the Secretary and Assistant Secretary, because of the mounting pressure of the business community for substantially increased trade with the U.S.S.R. and Eastern Europe, particularly in sophisticated equipment, plants and technology; because of the Congressional encouragement of such pressures reflected in the replacement of the Export Control Act of 1949 by the ambiguously titled Export Administration Act of 1969; and—for my work particularly—by certain new guidelines which I received from officials to whom I was instructed to report from then on. One of their directives was that I relieve the Secretary and Assistant Secretary of the burden of considering my Operating Committee recommendations, allowing a Deputy Assistant Secretary to take on their chores, except as and when he deemed it important for him to inform them. Another instruction was that whenever the export licensing officials presented a license application to the Operating Committee with recommendation for approval, I should ask the advisory department members if any had an objection and, if not, I should present the case to the Deputy Assistant Secretary with recommendation for approval, and not hold it in the Committee for further technical or other analysis by the licensing officials or advisory departments, even though I might consider the case unclear or questionable. Though I could communicate my doubts to the Deputy, the new procedure did diminish substantially my watchdog function since, if he did not share my concern, that was the end of the matter. Another guideline I received from these new officials was that in no case of a license application recommended to the Operating Committee for approval by the Commerce licensing officers should I entertain an advisory department's objection to approval unless its representative assured me that his subcabinet-level superior approved the objection and would be prepared to appeal to the Advisory Committee on Export Policy if I recommended approval. These two new guidelines had the effect of deterring representatives from Defense and other national security agencies from voicing objections, save in the gravest cases, for one thing because of their difficulty in communicating with their subcabinet-level superiors often enough and as speedily as required by the time pressures put on the Committee. They tended therefore to increase approvals in borderline cases, in keeping with the trade promotion duties of the new Deputy Assistant Secretary and other new officials. That this course was not inadvertently taken is shown by testimony of one of the new officials before a House Committee, where he said: "I . . . assure you that the staff that works on these applications does it with a dedicated effort and that there is a bias toward approval, wherever possible."

This new approach was taken in cases of foreign policy concern as well as those of national security interest. I remember several in which paramilitary and other sensitive equipment was to go to a friendly country to which the State Department, for foreign policy reasons, opposed its shipment. One of the new officials did not wish to deny these applications, though all members of my Committee concurred. Instead, he held the cases a long period, while he sought to persuade State to drop its objections and to assist the exporter in retailoring the applications so as to overcome them. Eventually the orders died and the cases were returned without action.

As I recall, the new officials had come to Commerce from the world of export business, and at least one of them returned to it after a few years. Their Commerce positions were principally concerned with the foreign trade promotion missions of the Department, and only partially with export controls, though I am sure that one of them, at least, benefitted from his experiences in both fields when he afterward became a top official in an organization concerned with improving U.S. trade relations with the U.S.S.R.

In recalling these occurrences, I must rely on my memory, unaided by any files or notes. I could not even identify the cases to enable files to be sought, if they still exist. But I believe my record of outstanding service in both Republican and Democratic administrations between 1948 and 1974 will absolve me of any suggestion of partisanship in my recollections. And I must emphasise that I do not contend that these officials acted with any improper motives, but simply that their strong belief in the Department's trade promotion goals, which they were sworn to carry out, when added on to the balancing function they were obliged to perform under the Export Administration Act of 1969, led them over the edge, to tip the scales for promotion and, in effect, define more cases as borderline, rather than on the side of denial. The results may have been consistent with their trade promotion duties, but they were not what I believe an administrator having only Administration Act duties would have done.

I believe that Commerce's administration of export control legislation has been subjected to more, more frequent, and more intensive reviews by House and Senate Committees than any other regulatory body, and certainly any of temporary duration lasting 35 years. My probably incomplete file includes Senate and/or House investigative hearings and reports in 1948, 1950–51, 1953, 1955, 1956, 1960, 1961, 1961–62, 1964, and 1968–69. In addition, House and Senate Committees conducted extensive hearings cn proposed revisions of the legislation in 1949, 1962, 1965, 1969, 1972, 1974, 1979, 1980, and possibly others since then, not including this hearing. And, of course, additional reviews, possibly more routine, were held by House and Senate Committees on extensions of the duration of the controls, in 1951, 1953, 1958, 1961, and certain later years.

Some of the investigative reports contain findings that could match those set forth in the Commerce Inspector General's report of June 1982. As far back as 1951 one Senate Committee said: "There should be a single agency or individual responsible for and with sufficient authority to coordinate, influence, evaluate, and establish policy for all activities which can bring about the conditions and machinery necessary for fulfillment of export control objectives."

In this setting, I turn to the basic issue of the nature and gravity of Commerce's conflict of interest, as I observed it over the years, taking account of the circumstance that for most of the years I was not *in* the office of export licensing, but worked with and for its people. Thus my legal enforcement activities of the first 13 years were performed as a member of the General Counsel's office, assigned to head the enforcement legal staff for the export licensing and compliance organization, except during my very first year in the department. And all but the last few years of my tenure as Executive Secretary of the Export Control Review Board and related committees found me reporting directly to the Secretary and Assistant Secretary, and even after 1969 I reported to an official heading the Bureau of International Commerce who also wore the hat of Deputy Assistant Secretary.

For about 80 years the Department of Commerce has had the exceedingly important and far-reaching functions of "fostering, promoting and developing the foreign and domestic commerce of the United States." They are duties to be proud of and every Secretary and every subordinate has been proud to bear those great responsibilities. Most of Commerce's appropriations and most of its personnel, from the highest to the lowest levels, have been and are engaged in carrying out such duties solely. To be sure, since 1945, a comparatively small number of people have been assigned solely to carrying out the Department's export control functions. But all those people have always been a substantial number of echelons from the top of the Department, and the highest level of such persons has always been required to report to one or more intervening layers of officialdom where export promotion and export control duties are combined. To my recollection each such official wearing the two hats of promotion and control was surrounded by numerous aides concerned with export promotion, but regularly met with only one or two of the highest level persons in the export control organization. And each such person wearing two hats in my best judgment devoted most of his time and effort, and most often saw the Secretary and other top level officials about what he was doing and proposed to do in furtherance of his trade promotion mission.

For Commerce officials to meet and assist businessmen in the fostering, promoting and developing of international trade is a pleasant and positive undertaking. It is doing good for our country. Commerce officials who came from the business world can only be happy to work with members of their world who are still on the outside. Other such Commerce officials may properly hope that their good services to businessmen will some day be rewarded by an opportunity to reenter or enter the business world—not an improper dream, since there is no conflict of interest between government and business in trade promotional activities.

In contrast, Commerce personnel involved in export control duties generally are always at risk that their decisions may have to be unpleasant to businessmen. Approving export licenses is pleasant. Removing commodities from licensing restrictions is pleasant. But when licenses must be denied, when commodities must be controlled, or when a businessman must be charged with violating controls, then the work of the export control official is negative and unpleasant, to himself, and to everyone else in the Department who has the pleasant duties I have described.

For export control personnel working in the Commerce building it can only be an environment that continually reminds them of positive nature of their neighbors' work and the negative nature of their own. They see that the trade promoters get better pay and greater opportunity for promotion, that the promoters receive the favorable glances of their mutual superiors, and that even management people see the importance of providing the promoters with pleasanter offices, furnishings and

other perquisites. I am reminded that bright young people brought into the Department under its "intern" program, when given a tour of duty in the export control organization, always conclude not to stay with it, because it is "negative", and not likely to lead to advancement.

Turning to higher officials who wear the two hats of trade promotion and supervision of export controls, I have observed over many years that the businessmen they most often meet and work with are those interested in fostering, promoting and developing foreign commerce, searching for markets desirous of taking part in overseas trade missions and trade fairs, of being members of trade promotion organizations, and the like. Here again we have developing a positive and pleasant atmosphere, from which friendly relationships can arise. If such a businessman is interested in trade with a country toward which national security or foreign policy export restrictions apply, the 1979 Act countenances that, so what matter if the business man presents arguments that his product ought not be subject to the restrictions, or that his license application should be approved as an exception, or because he says a comparable product is available abroad. He has shown the government official that he is an honorable person, and he has portrayed large benefits that can come to the U.S. by encouraging trade in his product with the country in question. So, is the government official even likely to worry that he may be tipping the scale too far in the promotion direction, when he instructs his export control subordinate to expedite review of the business man's case and when he decides that the question-raising bits and pieces of technical and intelligence information the license officer is able to collect on short notice are really too vague to justify a denial of the case, or even a likely delay of its processing in the licensing office and possibly the Operating Committee? Is this a far-fetched, hypothetical case? I remember similar happenings, in various periods over the years. And, as I remember the press accounts of problems experienced by present Assistant Secretary Brady, in his previous tenure at Commerce, I am sure he saw comparable happenings then. Indeed, it was the fear of such kinds of subtle and pervasive favoritism toward businessmen by government officials in settings of an innocent and seemingly mutually beneficial nature, that led Secretary Hodges, in 1961, to ask the Business Advisory Council to leave the shelter of the Commerce building and go off on its own.

What then shall we say of these Commerce officials wearing two hats? If we accept the premise that they are honorable men who would never knowingly decide an export control matter on an improper basis, then we must still recognize and conclude that the two functions just cannot mix. To be a good salesman, in government or out, requires enthusiasm and optimism, a strong belief in the product one is selling. These are characteristics that go well in Commerce's work of fostering, promoting, and developing foreign commerce. But to be a good export controller, even in the equivocal confines of the Export Administration Act of 1979, calls for other characteristics—for those of a prudent credit manager, and even at times the skepticism of a security guard or policeman, and those traits are seldom found in salesman or in government officials hired or appointed mainly because of their trade promotional expertise.

Having thus considered the problems engendered for trade promoters and export controllers in the atmosphere of Commerce, let us consider the impression that a business man gets when he walks into the Commerce Department on an export licensing or other export control matter. It is clear from his first view that the business of Commerce is business, and that Commerce is his friend and advisor in government, unlike so many other agencies which appear indifferent or even hostile. He sees quickly that almost all of its offices, bureaus, branches, and divisions are devoted to activities concerned with serving business, giving information, advice, market leads, and a host of other benefits, even with respect to such countries as the USSR and the Peoples' Republic of China. And, of course, this is as it should be. When he comes to the corridor where the export control officials dwell, what then? I do not know what the conditions are today, but I know that for many years, the export control offices were in a remote, out-of-the-way area, with small, cramped, old and dirty offices, with old poor furniture and furnishings, and that such conditions—in contrast with the provisions made for trade promoters—could not help but tell business men where the export controllers stood in higher level opinion. At the same time, the business man would observe that the export control offices were generally given cosmetically up-beat, pleasant sounding titles, such as Office of Export Supply or Export Administration, instead of the harsher title of Export Control, and that there was a more friendly sounding Compliance Unit, instead of a tough-sounding Investigations or Enforcement Branch. Such cosmetic titling would not be unfamiliar to the business man visitor, being often used in the business world for message-sending purposes. And the message here to the business man is that regardless

of any tough talk from export controllers the business men in government are really in charge. And when he goes from the export control officers upstairs to their two-hat-wearing superiors, he finds that his surmise was correct. He is in a much more pleasant, friendly atmosphere, and the official he is telling his troubles to is sympathetic and understanding. And this is the atmosphere of Commerce—a climate controlled for real purposes by the traditional mission to foster, promote, and develop commerce.

Again I ask you not to pass this description off as a far-fetched, hypothetical case. Secretary Hodges described a very similar one, which happened to him when he served in the OPA during World War II. It is told in his book on business ethics, called "The Business Conscience."

Does it make any difference for the decision you must make that present Commerce officials say changes have been and will be made to restore a balance between trade promotion and trade control personnel and functions? Look at the Congressional committee reports of past investigations, and you will find similar assurances of improvements made and promised. They could only bind the individual Commerce officials who made them, and when they left their successors might not even know that promises had been made. And, with Congress having moved on to other subjects, who is to question when things return to the status quo ante at Commerce, which has often happened simply because the status quo ante was more in keeping with the trade promotion traditions and tendencies? the same short-term effect of change could only be counted on now.

Is it an answer to say that the higher-level Commerce officials are honorable men who would never knowingly allow export control requirements to be frustrated by trade promotion desires? The blunt fact is that appearances are against these officials, even if there were nothing else in the record. And, this is a situation where because of the questionable appearances, a prophylactic rule should be applied, and the best one here is to put the export control program in an independent agency whose personnel from the top down function with an eye single to the carrying out of the provisions of the 1979 Act and other export control laws.

Just as we say that there must not only be justice, but also the appearance of justice, so I urge you to conclude that there must not only be even-handedness in the administration of the 1979 Act, but also the appearance of even-handedness. And that cannot be achieved in Commerce, despite the best of intentions of its officialdom.

A last point I would like to address is the answer of Commerce officials to one of the criticisms expressed well in the Department's Inspector General's report of June 1982. They say that no harm could come from having Commerce officials in charge of export controls who also wear the hat of trade promotion, because "the Department's interest in export promotion is obviously limited to the promotion of lawful exports." This might be a good point if some one other than Commerce officials determined what is and is not a lawful export. But the same export control personnel and their same two-hat-wearing superiors decide which commodities to control and which ones they need not require licenses for, and to which destinations, and the same people also decide which licenses to issue and which to deny. So they are the ones who determine which is a legal export, and if their trade promotion motivations override their export control duties in making such determinations, cannot they feel content that they have only expressed the Department's interest in lawful exports? And is it not therefore a begging of the question to seek to excuse the departmental conflict of interest in this way? Are they not seeking to be judge in their own case?

For the foregoing reasons I urge you to recommend enactment of this bill by the Senate.

The CHAIRMAN. So let me now turn to Mr. Funk for his testimony. And I will have some brief additional questions for both of you.

STATEMENT OF SHERMAN M. FUNK, INSPECTOR GENERAL, U.S. DEPARTMENT OF COMMERCE

Mr. FUNK. It is very late, Mr. Chairman, and both you and Senator Proxmire have quoted at some length from my report that we issued last June. So I would like to summarize very, very quickly my statement and submit it for the record.

The CHAIRMAN. We will be happy to include your full statement in the record.

[The complete statement of Mr. Funk follows:]

STATEMENT BY SHERMAN M. FUNK, INSPECTOR GENERAL, U.S. DEPARTMENT OF COMMERCE

I am pleased to participate in your hearings on the role of the U.S. Department of Commerce in carrying out the Export Administration Act of 1979.

Last April, an inspection team from my office reviewed the operations of the Office of Export Administration's Compliance Division, now the Office of Export Enforcement. I issued a report on June 11 which presented the findings from that inspection, together with a series of recommendations. The Committee has asked me to comment on those findings, and to evaluate the actions taken by the Department since then to correct the inadequacies cited in our report.

I should like to emphasize that we have not conducted a full-scale management audit of the export enforcement function since it was revamped in the fall. We do not plan such an audit until early in the next fiscal year. However, in view of the gravity of the findings in our inspection report, we have been monitoring the progress of the new Office of Export Enforcement, and we have conducted an interim review of the status of actions to implement our recommendations. I therefore believe that I am in a position to address the question put to me by the Committee.

As a general preliminary comment, the committee should be aware of my belief that strict enforcement of U.S. export controls is an extraordinarily difficult task, given the nature of our open society, the vast range of our international trade ties, the complexity and number of products involved, and the ingenuity and determination of our adversaries. But I believe that the danger of technology leakage is sufficiently critical to warrant a response by the United States which reflects even greater ingenuity and determination. Our review of Commerce's portion of the U.S. Government's responsibility to enforce export controls was conducted last spring with both the enormity and importance of this job in mind. We suspected before we went in that there were serious problems; indeed, this suspicion is what triggered our review. Also, the Under Secretary for International Trade, Lionel Olmer, had expressed his concerns about this area shortly after I came on board, and recommended that we select it for audit. Mr. Olmer has since concurred with most of the findings and recommendations in our inspection report. He has promised and, in many cases, taken action to strengthen the Department's enforcement of export controls.

I will now outline the major findings of our inspection team, and provide an evaluation of corrective actions implemented and planned.

1. The Office of Inspector General inspection team found the export compliance arm of the Department crippled by lack of manpower and resources, inadequate and often conflicting leadership and policy direction, and ineffective cooperative relationships with its vital partner agencies—the U.S. Customs Service and the Defense and intelligence communities. Internal personality conflicts, antiquated or ineffective internal operating procedures and guidelines further hampered operations of the Division.

We found that officials of the Office of Export Administration, which housed the Compliance Division, frequently sought to direct or become personally involved in investigative cases and, in so doing, circumvented the Division charged with that responsibility. They did this apparently because they doubted the competence of the Compliance Division staff, which was engulfed in severe internal management problems and/or incapable of responding in a timely and effective manner to intelligence leads or following up on important investigative cases, including some with international ramifications. The results of such intervention, however, were not more efficient and effective operation of the Compliance Division. Rather, they produced conflicting management direction, low staff morale and continued ineffective enforcement of export controls.

The inspection team found no evidence that the Office of Export Administration had developed a clear and effective national strategy to halt or, at least, slow the illegal export of U.S. technology and products. We believed that the Department of Commerce, in cooperation with the Departments of Defense and State, the CIA, and Customs, was responsible for providing aggressive leadership to a multiagency effort designed to tackle this vital problem so materially affecting our national security. Despite the Department's commitment to an effective export control policy at the time of our inspection last April, we concluded that the Department was not in fact leading such an effective export control program.

We found that there was a perceived conflict between the Department's dual missions of trade promotion and trade control. We did not find any evidence that the

Department was deliberately holding back on enforcing export controls because of its desire to increase U.S. exports. What we did find was that the Department's failure to provide adequate resources, policy guidance and management direction had impeded the export compliance effort and created at least a perception that this reflected a de facto supremacy of the trade promotion mission over the export control function.

I am pleased to report today that the Department has made substantial progress in correcting these problems, and similar inadequacies identified by the Senate Permanent Subcommittee on Investigations, the GAO, and others. To begin with, Commerce's entire export enforcement effort has been sharply upgraded, organizationally, qualitatively and quantitatively. The Compliance Division has been raised to office stature, the Office of Export Enforcement, reporting to a Deputy Assistant Secretary for Export Enforcement. To fill this new position, the Department brought in an Assistant U.S. Attorney from California, Theodore Wu, with extensive experience in prosecuting illegal diversions of technology. Mr. Wu, supported by Assistant Secretary Lawrence Brady and Under Secretary Olmer, appears to be on his way in turning things around. As an example, of the 21 export control cases being worked now by the Department of Justice and U.S. Attorneys, 16 were developed by Commerce since Mr. Wu's arrival last July.

2. Our report noted that the Compliance Division had insufficient trained personnel to do its job. We found that it had only 18 investigators to cover the entire country, most of them operating out of Washington, D.C., and about 12 others in various intelligence or inspection roles plus six support staff. Most of the staff had had little, if any, recent training in law enforcement or intelligence work, nor was any formal training planned.

As of last week, the number of investigators has been increased from 18 to 49, and personnel actions have been initiated to bring this number up to 57 by the end of May 1983. The total export enforcement staff has been increased from 36 at the time of our inspection, to a current 78, including support staff. That staffing level is slated to increase to the fiscal year 1983 approved budget level of 88 by the end of May. This is also the fiscal year 1984 DOC-requested level. I have been assured that the new staff brought on board are already trained investigators, many of them experienced in export compliance cases. One of the new people, another former Assistant U.S. Attorney, is developing a comprehensive training program, both for the existing and newly hired staff. Seven agents already have been sent to the excellent two-month course at the Federal Law Enforcement Training Center in Glynco, Georgia; others have received specialized training in languages, computers or firearms. I understand that a planned in-house training program on export enforcement and intelligence analysis will not be ready until next fall. Although some training is already underway, in the computer area for example, we would have liked to see more training in these critical areas. Also, one aspect of the personnel picture which needs particular priority is the recruitment and selection of middle managers under Mr. Wu; a gap still exists here.

As Inspector General, and in the absence of an in-depth management audit, I am unable to judge whether 88 people, the currently approved level, are enough to adequately handle Commerce's export enforcement job. But also as Inspector General, I must admit that an augmentation of 144 percent, particularly a well-trained and motivated augmentation of this magnitude, represents very real progress.

3. We found that the Compliance Division, in fiscal year 1982, spent only $1.756 million of its $2.013 million budget. For fiscal year 1983, as a result of a reprogramming action within ITA, the original fiscal year 1983 approved level has been increased by $1.39 million, from $2.13 million to $3.521 million. I understand that the Department has requested $3.908 million for the Office of Export Enforcement in fiscal year 1984, a further increase of $387,000.

4. We found that the Assistant Secretary for Trade Administration had been unreasonably slow in establishing Export Compliance Field Offices on the west coast. About 85 percent of the total value of U.S. controlled exports leave from west coast ports and airports. However, we found that long planned offices in Los Angeles and San Francisco had still not been established and staffed as late as last April.

Our followup review ascertained that both of these offices are now fully operational, with 12 staff on board in Los Angeles, and 12 in San Francisco. The New York office is scheduled to increase from its current staff of nine to 14. There is now a Washington field investigative branch in addition to the Washington Headquarters operation. Obviously, there are gaps in coverage: for example, in New England, the Great Lakes area, and the Gulf Coast. Nevertheless, from the standpoint of effective investigative effort, I would concur with Mr. Wu's present arrangement of his field force, perhaps because I have made a similar call with my own field staff. It is im-

portant not to diffuse resources by scattering them too thinly. That might look good on paper, in bureaucratic organizational boxes, but it does not produce efficient investigations.

5. We found that the Export Compliance staff had inadequate investigative equipment. The investigators had been unable to procure necessary technical equipment and were forced to use their personal equipment, borrow from other agencies, or go without. The division had no cameras, surveillance team communications equipment, or consensual monitoring and other law enforcement devices.

Since our inspection, the Office of Export Enforcement has leased or purchased $418,014 worth of technical and secure communications equipment. This includes the lease of 11 cars, and the purchase of 33 sets of radios and auxillary equipment, photographic equipment, binoculars, and secure phones. Procurements are now being processed for an additional $14,000 worth of equipment, including a portable video system, and additional cameras and binoculars.

6. We found that both travel funds and actual travel of the Compliance Division staff were inadequate. Operational travel is an essential ingredient of effective investigative effort. However, our inspection indicated that investigators could not get travel requests approved, even when their assistance was requested by a U.S. attorney wishing to pursue a case.

The fiscal year 1983 travel budget for the Office of Export Enforcement has been increased nearly fourfold from the Compliance Division's fiscal year 1982 actual obligation level of $70,000. This year, $230,000 has been budgeted for staff travel, and the same amount has been requested for fiscal year 1984. I believe that these amounts are realistic, given the size of the staff, but frankly I am not sure. So far, at least, OEE special agents appear to be traveling operationally without budget restrictions imposed both in the United States and abroad. Much will depend upon the aggressiveness of Mr. Wu's operation, and the level and quality of overseas support available from Customs and other United States sources. This too is something we shall look at further.

7. We found that the intelligence operations of the Compliance Division were almost exclusively reactive rather than proactive. Instead of directing an aggressive, interagency intelligence gathering export control effort, we found that the Compliance Division did a poor job just in using what little intelligence data came its way from the intelligence community and from informants. It did not even thoroughly analyze and use the licensing data and information available from ITA's own Licensing Division data base. The Office of Export Administration's license accounting retrieval system (LARS) contains valuable intelligence information from licensing applications; it was not analyzed in any proactive sense by the Compliance Division's Intelligence staff and few, if any, leads were developed by that staff. Nor, as far as we could tell, did the Division's Intelligence staff use U.S. or Cocom intelligence information to develop leads which could later be pursued by the Investigative staff.

Inadequate staffing, leadership and computer analytical training were the major reasons we could identify for these Intelligence staff inadequacies. A severe backlog of Intelligence cases existed at the time of our inspection—well over 700 cases (the precise number could not be identified). We concluded that the Intelligence Branch was not providing timely and accurate assessments of suspected export control violations; less than 15 percent of the leads received by that staff were processed during the six-month period just prior to our inspection. This meant that inadequate intelligence work was inhibiting necessary and timely followup investigation. Possible prevention of actual export violations and successful Criminal Prosecution of, or administrative action against, actual illegal exporters were lost opportunities.

ITA reports that it plans to create specialized joint OEE/OEA analytical units which correlate licensing and other intelligence data in order to better identify export diversions, and that it will oversee the automation of the intelligence data acquisition and analysis operations. A new OEA technology transfer unit is to provide more data to Export Enforcement's Intelligence staff. Mr. Wu has advised us that he is developing an improved information flow from the United States and Cocom intelligence communities, and he also has promised a thorough review of his entire intelligence operation. The Export Enforcement staff has told us that the backlog of unreviewed Intelligence matters of 845 in May 1982 has been eliminated.

However, even granting the importance of these actions, I am convinced that more must be done in this area. For example, there seems to be a need for increases in OEE's intelligence staff, together with an ancillary need for specific intelligence training.

8. We found that cooperation and coordination between the Compliance Division and the U.S. Customs Service were inadequate and adversely affected enforcement

of export controls. We found evidence that interagency hostility, rivalry and lack of cooperation, or outright interference on some cases by one or the other of these two agencies, were hampering the enforcement of export controls. In some situations, the two agencies worked well together, but too much depended on personalities and specific agency leadership at any particular time; cooperation was not institutionalized. Despite the many reasons why the two agencies needed to work well in tandem, at the time of our inspection we found that this was not the case. We also found no written agreement, guidelines or procedures which laid out the responsibilities and role of each agency in this cooperative effort. We found, instead, numberous operating problems which hampered the effectiveness of both agencies.

Since last April, some of these problems have been corrected, especially on the domestic front. The Secretary of Commerce has issued blanket authority for release of paragraph 12(c) type information; this had been a delaying factor in Commerce's release of case information to Customs and others in connection with criminal investigations. Mr. Wu also is working closely with Customs officials and is now developing a formal interagency Memorandum of Understanding. The promised December 1982 target date for the MOU was not met, but we understand that negotiations are continuing. We would like to see written staff guidelines and procedures to accompany the proposed MOU; they should clearly spell out the role of each agency and its staff offices in the cooperative effort.

We have not yet verified that cooperation between Commerce and Customs has significantly improved, although we suspect that the appointments of Ted Wu and Trade Administration Deputy Assistant Secretary William Archey, a former senior Customs official, have helped matters. However, players can always change, and we should rely on institutionalized cooperation rather than on personalities.

It is essential that Commerce and Customs work together on export controls. Indeed, they have to if the Export Administration Act is to work. Each rings something the other lacks and, in the very nature of things, will continue to lack. We have seen this vividly in our current audit of the Antidumping and Countervailing Duty program; it is true on the export as well as the import side. We will follow up on progress made in improved Commerce-Customs Liaison and cooperation.

9. We found that the use of antiquated or inefficient internal administrative and management systems and procedures further hampered the effectiveness of the Compliance Division. In addition to the need to modernize the Division's intelligence and investigative techniques, information gathering and analysis, the inspection team found a pressing need to develop an effective internal management information system and automated administrative processes, including case control and time reporting systems and information storage. Antiquated manual processes were wasting scarce staff time, subject to frequent error and dependent on the inaccurate memories of a few key staffers. They also did not provide management with sufficient information to effectively and efficiently carry out the compliance function. We recommended that wherever the benefits outweigh the costs, management information and administrative processes should be automated and a dedicated, secured system for both the licensing and enforcement operations of the Office of Export Administration should be developed and put in place.

ITA agreed with our recommendations. A review of ADP requirements and applications for both OEE and OEA is now underway. The target date for completion of this review and implementation of selected options is October 1983. We will include a review of the adequacy of ADP applications in our planned management audit of the Office of Export Enforcement.

10. We found that the Compliance Division had neither adequate nor secure working space and files.

The Division's working space was, and continues to be, crowded, ill-maintained and noisy. Indeed, the situation is worse now, because more people have been crowded into the same inadequate space. Thus, nothing has changed to improve the working condition for the bulk of Mr. Wu's Headquarters staff. Although Wu and his immediate staff have been given adequate office space and equipment, the rest of Headquarters Export Enforcement staff waits for the promised move to new and larger quarters. The target date for that move is May 1983.

In sum, the Department clearly has taken steps since last spring to give its export enforcement mission additional resources, greater cohesion, and more professional management. Many of the problems we identified in our inspection have been corrected, and others seem well on the way to correction. Does this mean that everything necessary has been done to evolve an effective national strategy to combat the illicit leakage of technology? Of course not. The operative word is "evolve." Regardless of organizational make-up, it will take time for the U.S. Government network of intelligence, law enforcement and trade administration activities, working in close

concert with the U.S. exporting business community, to develop an effective export control program. It will take close cooperation with our Allies and with other third-party or intermediary importing and exporting countries. It probably will take a further commitment of resources. And it certainly will take more effective coordination on the part of the lead U.S. agencies.

This concludes my remarks about the Office of Inspector General's spring 1982 inspection of the operations, resources and management of the Office of Export Administration's Compliance Division, and our recent followup review of corrective actions taken by Commerce's new Office of Export Enforcement. I will be happy to answer any questions which the Committee may have for me.

Mr. FUNK. Just as a preliminary comment, the committee asked me to comment on the findings of our report last June and to evaluate actions taken by the Department since then to correct the inadequacies that were stated in our report.

We have not conducted a complete, comprehensive management audit of the export enforcement function since then but we have, because of the gravity of the findings, kept our eyes on the progress of the Office of Export Enforcement and have conducted an interim review. So I think I am in a position to give you at least some tentative answers.

Obviously, before we went in, we suspected that there were problems. Indeed, those problems triggered our inspection last April.

Also, Mr. Olmer was correct in saying that he did express a request to me that we look at the compliance function. Shortly after I came on board in June 1981, Mr. Olmer gave me a list of what he regarded as seven priority areas for our review. And the compliance function was high up in those seven.

COMPLIANCE FUNCTIONS CRIPPLED

Basically, we found—and I will go over these very, very quickly; as I say, some have been commented on earlier in the hearings—our report found that the compliance function was crippled by a lack of manpower and resources, inadequate and often conflicting leadership and policy direction, and ineffective cooperative relationships with its vital partner agencies such as Customs, Defense, and the U.S. intelligence community.

We found that there was no evidence that the Office of Export Administration had developed a clear and effective national strategy to halt or at least slow the illegal export of U. S. technology and products. And we concluded the Department was, in fact not leading such an effective export control program.

We found also there was a perceived—and I emphasize the word perceived—conflict between the Department's dual missions of trade promotion and trade control. We found no evidence whatever that the Department had deliberately acted to hold back enforcing export controls because of a desire to promote trade.

What we did find was that the failure to provide adequate resources and tight management direction had created this perception of a de facto supremacy of the trade promotion mission over the export control function.

Since then, we have looked again at the office, which has now been upgraded from a division to an office, the Office of Export Enforcement. And we feel that there has been a qualitative and quantitative improvement as well as an organizational one.

There was a new Deputy Assistant Secretary position created, filled by Mr. Theodore Wu, former assistant U. S. attorney from California, who has extensive experience in prosecuting illegal diversions of technology.

In brief, Mr. Wu has clearly in our opinion made a very determined and successful effort to begin to turn things around. And perhaps the best graphic evidence of that is that of the 21 export control cases now being worked by the U.S. attorneys around the country, 16 were developed by Commerce since Mr. Wu's arrival last July.

INSUFFICIENT TRAINED PERSONNEL

Our second major finding in the report was that the Division had insufficient trained personnel to do the job. It had only 18 investigators, for example, to cover the entire country. Most of the staff had little recent training in law enforcement or intelligence work.

As of last week, the number of investigators we found has been increased from 18 to 49, and actions are now underway to bring the number up to 57 by the end of May. The total export enforcement staff has been increased from 36 to a current 78, including support staff. And that is slated to increase to the fiscal year 1983 approved budget level of 88 by May 1983.

This is also, by the way, the same level requested in the 1984 budget.

Furthermore, the new investigators brought on have all had prior training in investigations. And if they haven't had such prior training, they have been sent to the Federal Law Enforcement Training Center in Glynco, Ga.

In addition to that, some of them are receiving specialized training in languages, computers or firearms. Also, training is already underway in the computer area, as I mentioned.

We would like to see even more training, but at least the training program has started, and it appears to be effective.

Now, if you ask me as Inspector General, do I think that 88 people are enough to adequately handle the export enforcement function, I cannot answer that. I have also to say, though, that as I.G., the 88 people represent an augmentation of 144 percent. And that obviously represents some substantial progress.

In terms of budget, we found that the Compliance Division had slightly over $2 million in its budget in fiscal year 1982. The budget is going up in fiscal year 1984 to $3.9 million which represents roughly almost a 100-percent increase over the 1982 level.

We found that the bulk of controlled exports leave from the west coast. However, the long-planned offices in Los Angeles and San Francisco had not been established or were not operational at the time of our inspection.

Our review now shows that both of these offices are fully operational, and they have 12 staff on board in Los Angeles and 12 in San Francisco. The New York office is scheduled to increase from its current 9 to 14.

And in addition, Mr. Wu is planning to open a Washington field branch.

We still feel there are gaps in coverage. They were mentioned, I think, Mr. Chairman, by yourself. The fact remains that there are no export enforcement offices in the field with investigators in New England, gulf coast, or the Great Lakes area.

I have to also say, though, that if I were in Mr. Wu's position, given the number of staff, I would have opted for the same position that he did. I think it is a danger to diffuse your resources by scattering them too thinly. It is more important to have a well-functioning, well-staffed operation in a few locations rather than trying to fritter them across the board.

I am aware when I say that, sir, that I made the same basic decision with regard to my own field staff.

We found in our inspection that the export compliance staff had grossly inadequate investigative equipment and were forced to use their own personal gear, to borrow from other agencies, or to go without.

Since our inspection, the Office of Export Enforcement has leased or purchased $418,000 worth of technical and secure communications equipment. This includes the lease of cars and the purchase of radios, and auxiliary equipment, photographic equipment, binoculars and so forth.

In addition, $14,000 worth of additional equipment are now being purchased.

We found in our inspection that travel funds as well as actual travel in the Division were inadequate. Operational travel is an essential ingredient of effective investigations; but we found that travel was grossly inadequate.

We have since looked at this in some detail. We believe that the travel budget for the Office of Export Enforcement has been increased fourfold since then from an 1982 actual obligation level of $70,000 up to $230,000 this year. This appears to be adequate, a realistic budget. But, frankly, I am not sure; a lot depends upon the aggressiveness of the operation itself and upon the level and quality of overseas support available from Customs and from other U.S. sources.

On balance, however, it appears to be a good figure.

The intelligence operations of the Compliance Division, we found last spring, to be almost exclusively reactive rather than proactive. Instead of directing an aggressive, interagency intelligence gathering export control effort, we found the Compliance Division did a very poor job just in using what little intelligence data came from ITA's own data base. It did not even thoroughly analyze and use the licensing data available from ITA's own Licensing Division, which is, of course, an excellent source of intelligence information.

We identified inadequate staffing leadership and computer analytical training as the major reasons for these intelligence inadequacies. We also found well over 700 intelligence cases backlogged at the time of our review.

It seems now that the ITA has pretty much agreed with our recommendations along this line. It is now establishing a specialized analytical unit that will correlate both licensing and intelligence data and oversee automation of the intelligence data acquisition and analysis organizations.

Mr. Wu has advised us that he is developing an improved information flow from the U.S. and Cocom intelligence communities as well as beginning to unvail a thorough review of the entire intelligence operation.

However, granting the adequacy as far as they go of all of these actions, I am convinced more could be done in this area. There has to be, it seems to us, an increase in the Office of Export Enforcement's intelligence staff, together with an additional degree of intelligence training. Nothing is more important, nothing is more important, than the ability to use properly an adequate intelligence base and feed that to the investigative area.

INTERFERENCE BETWEEN AGENCIES

We found that the cooperation and coordination between the Compliance Division and U.S. Customs Service were inadequate. And we found evidence of interagency hostility, rivalry and lack of cooperation and, in some cases of outright interference. We found these were hampering the enforcement of export controls.

In some cases, the two agencies worked well together. But too much depended upon personalities and specific agency leadership. We found there was no written agreement, guidelines or procedures which laid out the responsibilities of each agency.

Since last April, some of these problems have been corrected, especially on the domestic front. The Secretary of Commerce has issued blanket authority for release of paragraph 12-C type of information. But I was not aware until today that there may still be a problem on releasing this information to Customs in a timely manner. We will look at this more closely.

There seems to be a degree of closer coordination now between Customs and the Export Enforcement Office of Commerce. If this is adequate, frankly, we don't know. We would like to see the signed memorandum of understanding between the two agencies which Mr. Olmer referred to earlier today. Mr. Chairman, as you mentioned, is that in Washington, personalities change, players change.

It is therefore important that whatever agreement is established be institutionalized and that this be accomplished in written agreements with specific and clear-cut guidelines.

I also feel that Commerce and Customs each bring something which the other does not have. We found that out in our audit that is going on now of the antidumping and countervailing duty program. And we have seen that there are contributions that both agencies can make individually, and some things that neither can do well without the other. We found that this is true on the export side as well as on the import side.

In our review last spring, we found the use of antiquated or inefficient internal administrative and management systems and procedures further hampered the effectiveness of the Compliance Division. And we have presented a series of recommendations involving a management information system and administrative processes which needs automation or other improvements.

ITA has agreed with our recommendations, and some corrective action is underway and nearing implementation. One finding

which has not been implemented yet is the recommendation that the Compliance Division staff acquire better working space.

We found then that the working space was crowded, ill-maintained and noisy. The situation is worse now because Mr. Wu has more people than when he came on board. Additional people, as I mentioned earlier, were allocated to the enforcement effort. But they are crammed into the same space. So the situation is actually worse now than it was during our inspection.

We have been told by the Department that this situation will get attention, and should be corrected by May.

In sum, the Department clearly has taken steps to give its export enforcement mission additional resources, greater cohesion, and more professional management. Does this mean that everything necessary has been done to evolve an effective national strategy?

I think, obviously, the answer is no. Because the operative word is "evolve." It is going to take, regardless of organizational makeup, time for the U.S. Government network of intelligence, law enforcement and trade administration activities working in close concert with the U.S. exporting business community to develop an effective export control program.

It will take close cooperation with our allies and other third-party or intermediary exporting or importing countries. It probably will take substantially greater resources. And it certainly will take more effective coordination on the part of the lead U.S. agencies.

I would be happy to answer any questions you may have, sir.

The CHAIRMAN. Thank you very much.

Do you have any mandate from Mr. Olmer to followup this investigation with an additional one to determine what improvements have been made? Because your first report, especially being an inside report, could certainly not be called a whitewash job at all.

Mr. FUNK. No, sir. Many words have been applied to our report, but whitewash is not one of them.

The CHAIRMAN. Do you have any intention to followup, to come back with a further report before this committee that would indicate what improvements had been made? Because you made some very, very harsh criticisms of the agency which are not new, but I think are especially important because it is an internal investigation, and it found very serious flaws internally.

FULL MANAGEMENT AUDIT SCHEDULED

Mr. FUNK. We are scheduling a full management audit in the early fall of this year. We will not have enough material before then because the Office was substantially revamped when Ted Wu was brought on board, and Bill Archey also came from customs. We feel that the Department should have a chance to put their plans into effect.

I suspect that in October, or November at the latest, we will begin a major management audit which will take a very hard look at what has happened since our review in April of 1982.

The CHAIRMAN. Mr. Thau, could you describe in more detail how the trade promotion bias permeates Congress?

Mr. FUNK. What was that?

The CHAIRMAN. I am speaking to Mr. Thau.

From all of your work at Commerce, could you expand more fully on the comment that its trade promotion bias does permeate the Commerce Department.

Mr. THAU. I can approach it briefly in this way: As far as the perception of the business community is concerned, I believe, and I have had a chance to confirm this in the 9 years I have been away from the seat of Government, from talking to businessmen out in the world, that Commerce is felt to be their Department. That is the Government agency where they believe they can go and find a friend.

And, by that, they mean the people in Commerce at the higher official levels. They believe they can get from those people support in coping with problems that they run into with licensing officials on the export control side, or with their enforcement people.

As far as the people who wear the two hats in Commerce are concerned, there is a general perception that they are balancing water on both shoulders and that their tendency, because they come out of the business world and are going back to the business world when their tour of duty is over, is to be understanding and sympathetic to the businessmen's complaints.

As far as the people in the export control operation are concerned, they know, from the kind of living quarters they have, from the way they are dealt with by the businessmen and by their superiors, that they are, as I said about the enforcement people, bulls in a china shop. All they can come to their bosses with are unpleasant stories, unhappy tales of having to hurt business more by controlling something, by denying something, by prosecuting somebody. A person likes to be liked, even if he is an export control person. He knows he will be liked if he approves and if he decontrols; he knows that is route of promotion; and that is the avenue to better prospects outside.

EASIER TO SAY "YES" THAN "NO"

The CHAIRMAN. I understand the problem. That's why we have a $1,300 billion national debt, and $200 billion deficit, because Congressmen and Senators like to be liked as well. And it is much easier to say, "Yes, we will appropriate that money for you," than it is to say, "No, we will not."

I think that is an inherent situation with all of us. I'm glad that Commerce has a bias. I think they should. I'm glad the business community has a department called the Commerce Department. And I don't want them to stop that.

I want them to understand that. It is just that it is as you say, Mr. Funk, not intentional. I don't accuse anybody in Commerce of doing anything intentional to help the Soviet Union. That is a ridiculous thought. But the reason the Commerce Department was created was to promote business. That is what they are supposed to do.

With the attacks on the business community the last couple of decades, they ought to have some advocate in this Government. That's why I came to the conclusion we ought to go to a separate office because I don't think that is an effective program no matter how much Mr. Olmer tries.

There is always going to be that business bias. And if there isn't, then the Commerce Department is not doing the job that it was set up to do.

Mr. Thau, do you agree that it is probably impossible to solve this problem if it stays with Commerce no matter how sincerely anybody wants to, this administration or any other?

Mr. THAU. I don't believe it can be solved in Commerce. I think the situation in Commerce with regard to export controls is precisely as it would be, sir, if someone had the audacity to suggest you put into law a transfer of the Federal Trade Commission or the Securities and Exchange Commission into the Commerce Department, on the ground that they all deal with business.

You would never think of doing that. I don't think the American people would stand for it. And neither does Export Control, as a regulatory agency, belong in Commerce.

The CHAIRMAN. You see, there are some that think export control should be in the Defense Department as proper to defense. I wouldn't want that kind of bias; you would never sell anything.

Mr. THAU. Businessmen would complain justifiably of that. But they don't complain about Commerce, except that Commerce hasn't done more for them, in the way of easing controls.

The CHAIRMAN. Well, I'm willing to listen to suggestions. It is difficult for me to understand how if we put them with any individual department that we are suddenly supposed to break them away from their biases.

The Defense Department is supposed to defend this country; the Commerce Department is supposed to help business and foreign trade. That is what they are for.

So it seems to me, if you put it in any of those, then they have a conflict and a built-in inherent bias that they cannot overcome. And that is the reason that I go to a separate agency to remove those kinds of biases and have export controls looked at more objectively even though I hate to create another separate agency.

Mr. Funk, do you think it is possible internally? You are the Inspector General. How in the world can Commerce divert itself from its major purpose for existence?

Mr. FUNK. If you ask me if I think it is possible, the answer is yes, sir. Is it easy? No.

PROBLEMS FOR 30 YEARS

The CHAIRMAN. It hasn't been done for 30 years.

Mr. FUNK. Perhaps it hasn't been. But this is not a totally new situation. We have in the National Marine Fisheries Service both the fishery enforcement function and fishery promotion function. And there is an analogy between that and the trade promotion and enforcement issue. In some ways, it is not as global, of course, but there is that analogy.

And I suspect you could find a similar type of built-in conflict in many agencies. As long as the missions are institutionalized and are clear cut, and as long as it is explicitly understood in a way that will not change with the change of administrations, as long as these things go on, and the resources are there, yes, I think it is possible.

The CHAIRMAN. The only way I see it can be possible is if you had a totally different structure within Commerce, not answerable to the Assistant Secretaries. I just wish I could agree with you. But I don't see how it is possible to separate it. And I suppose we could try for another 30 years. But by then, we may have no technology left.

Well, gentlemen——

Mr. THAU. I just want to add one last thought. As I listened to the Inspector General read the summary of his report, I was reminded of the 61st Quarterly Report of the Commerce Department on export controls for the third quarter, 1962. It deals with the Department's response to Senate and House committee investigations which dealt, among other things, with the miniature ball bearing grinder case.

The CHAIRMAN. The ball bearings? There is a very good example of how we helped the Soviets.

Mr. THAU. Yes.

I have here, at pages 7 to 11, sir, a report that is almost identical with what the Inspector General has found, as to what was then wrong with export control compliance operations, and what was being done by Commerce to cure what had been found wrong by the committees.

The CHAIRMAN. Well——

Mr. THAU. I can go back to 1948, too, and find you another similar congressional investigative report. And, in between those two, I can find you other times when Congress has found the same problems in export controls as administered by Commerce.

The CHAIRMAN. You are correct, Congress and each succeeding administration has talked about it and been convinced that they can cure it internally, but it simply has not been done.

I try to have my hindsight be 20/20, so I don't disbelieve you, Mr. Funk, or Mr. Olmer; I believe in your sincere effort explicitly. But, boy, if you succeed where all of these others have not—it just goes round and round. That's why if I sound irritated and forceful and tired of waiting—and we are going to push for a bill to do something—it is because for a long time or before I ever graduated from college, Senators and Congressmen were sitting up here talking to administration officials from Commerce about changing it. And it simply has not changed.

You are going to be a miracle worker if you can do it internally.

Mr. FUNK. Sir, one of the most frustrating things you can find out, and the Inspector Generals have talked about this among ourselves at meetings of the President's Council on Integrity and Efficiency, is that the same problem has been highlighted in Inspector General reports, in GAO reports, and oversight hearings, media reports, again and again and again, for perhaps the past 30 years. And the issue has never been grasped. It goes on, and the problem is still there. It is extraordinarily frustrating.

The CHAIRMAN. It is like one of you said about how much you work, the less change there is. It reminds me of the situation when I was mayor of Salt Lake City. It has been nearly 9 years since I was mayor. You know, I pick up the Deseret News in Salt Lake City or the Salt Lake Tribune and read the stories about Salt Lake City's government, nothing has changed.

The present mayor is still doing the same things I was doing. It goes on and on and on. And that's why I feel more drastic measures are necessary to effectuate some change.

At least one of my big ideas while I was mayor took place. They changed the whole form of government in Salt Lake City after I left which was a step in the right direction, to get away from the commission form and go to a mayor and council form.

So maybe it will take after I am gone from here, but I hope we can solve this problem and say, "Hey, there were some people that did it, and it didn't take 30 more years to accomplish it."

Gentlemen, I appreciate your testimony and your patience very much. Thank you.

The hearing is adjourned.

[Whereupon, at 12:57 p.m., the hearing was adjourned.]

[Additional material received for the record follows:]

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

MAR 10 1983

Honorable Jake Garn
Chairman, Committee on Banking,
Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As requested, enclosed are responses to the additional questions of concern to the Committee contained in your letter of February 18, 1983. We have tried to respond fully and would be glad to elaborate on any of our answers.

I look forward to appearing again before your Committee to continue our discussions on this most important subject.

Sincerely,

Lionel H. Olmer

QUESTION NO. 1:

The Export Administration Annual Report for fiscal year 1982 indicated that 76,677 export license applications were processed in FY 1982. It also indicates that 82% of license applications received were processed without referral to another agency, while 18% were referred for policy analysis, or approximately 13,000. How many licensing officers are currently employed at OEA? What was the level one year ago? What was it in 1980?

ANSWER:

Licensing Officers employed in OEA:

February 1, 1983	43 Officers
October 1, 1981	34 Officers
October 9, 1980.	33 Officers

QUESTION NO. 2-3:

Would you describe the "front door" licensing procedure at OEA?

ANSWER:

The "front door" licensing procedure, a misnomer no longer applicable, pertains to those Free World export license applications which OEA has the authority to approve unilaterally without referral to other government agencies.

Further, we created this licensing procedure two years ago in response to complaints from exporters concerned about lengthy processing times for Free World export license applications. To speed processing, we located the procedure in the Processing Branch of the Operations Division. This single site processing means that applications move in a logical sequence within one area and are not physically transferred to three different locations in OEA. No steps in the licensing process are skipped, and these license applications are still subjected to the interactive intelligence and enforcement screening procedures necessary to insure export control violation detection and investigation. We feel that this concentration of functions saves up to two weeks in processing time.

QUESTION NO. 4:

According to the FY 82 annual report over 60,000 license applications were processed without referral by the front door licensing procedure last fiscal year. How many fulltime licensing personnel are actually assigned to this front door operation?

ANSWER:

We currently have assigned six fulltime licensing officers, three temporary licensing officers, one processing clerk and one supervisor to the "front door" procedure. In addition, we have initiated vacancy announcements for two additional Free World licensing officers.

QUESTION NO. 5:

What was the actual expenditure for training of investigative personnel in FY 1982, and would you describe the nature of the training received, such as how many personnel trained and for how long, and what was the course of training?

ANSWER:

During FY 1982 approximately $4,000 was spent on the training of two investigative agents related to travel and enrollment in the Criminal Investigators Course at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. Since the beginning of FY 1983, six additional investigators have completed this course and five more are presently scheduled to attend. All other OEE special agents who are now on board have already completed either the FLETC course at Glynco or equivalent training in a military or other federal agency. In addition, one agent has been sent to a firearms instructors class in anticipation of providing such instruction to OEE agents upon their authorization to carry firearms. Further, approximately 15 of the new agents have been routed through the Washington, D.C. Headquarters Office for orientation sessions prior to the assumption of their duties as OEE special agents (criminal investigators). Finally, operational and training manuals are being prepared and additional training programs are being developed and scheduled. It is expected that the training completed to date in FY 1983, as well as that planned for the remainder of the year, along with attendant training and procedural materials, will cost approximately $300,000. The basic orientation on the use of Commerce licensing computers in support of investigations was given at the San Francisco, Los Angeles, and New York Field Offices. It has been our practice in our recruitment efforts since June 1982 to hire experienced agents who have received formal training in their agencies of past employment.

QUESTION NO. 6:

Reportedly, the Customs Service, in its Silicon Valley operations, has offered a reward of $40,000 to employees of computer firms who report illegal high technology shipments, and then warned the heads of firms there to beware, that Customs won't hestitate to work covertly with employees. Has Commerce ever taken a step like that to deter violations of the Export Administration Act? If so, would you describe it for the Committee?

ANSWER:

The Customs' $40,000-reward offer was made in September 1982 in the San Jose-Santa Clara area. While the Office of Export Enforcement has a confidential investigative funds program, we do not regard the use of paid informants as a primary investigative tool. Indeed, the excessive use of paid informants can encourage and lead to abuses. Further, the use of paid informants does not necessarily achieve the best investigative results. In our experience, the great majority of the American business exporting community makes every effort to comply with the nation's export control laws.

In addition to our strong commitment to effective, aggressive investigation of suspected violations, our enforcement strategy emphasizes voluntary compliance and awareness on the part of the business community of potential violations because we believe that an aware, cooperating and compliant private sector is the first line of effective defense against illegal exports of strategic technology and commodities. In fact, as illustrated by the major export control cases of Edler Industries, Spawr Optical Research Inc., and Bruchhausen, the American private sector is and has been the main source of many solid investigative leads. We also rely heavily on the American intelligence community for leads.

QUESTION NO. 7:

Your annual report for FY 1982 indicates that 230,885 shipper's export declarations were reviewed for that fiscal year. How many full-time individuals are assigned to this operation?

ANSWER:

The general review of shipper's export declarations is accomplished in the field by our complement of five compliance inspectors. These personnel are permanently situated at JFK International Airport and during FY 1982 were periodically assigned to other major international ports such as Los Angeles, San Francisco, Boston, Chicago, and Miami. The review of these documents is preliminary to the more substantive inspection of cargo by the inspectors. Accordingly, they do not devote all their working hours to the review of SED's.

QUESTION NO. 8:

How many Commerce Department investigators are typically assigned to a major criminal enforcement investigation?

ANSWER:

The number of investigators assigned to a major case varies with particular facts and circumstances of specific cases. Major cases are not necessarily labor intensive. On a recent matter, seven investigators and three inspectors worked on a continual basis for a period of six months. Frequently, one agent will be assigned as the principal "case agent" to a major case; he/she is further supported by additional investigators and intelligence analysts as the tempo and the operational needs increase. Currently, we do have ongoing investigative cases where more than one agent is assigned to work on the case on a continual basis. Our experience since our reorganization in the beginning of June last year has shown that through the effective use of good intelligence and through proper case preparation it is neither necessary nor resource-effective to assign more than one case agent to a given major case as a general rule. This approach is a generally accepted practice among the various federal law enforcement agencies.

QUESTION NO. 9:

How many criminal investigators are currently employed at the Office of Export Enforcement? What is their level of education?

ANSWER:

We currently have 47 criminal investigators and have initiated recruitment for 6 remaining vacancies. The overwhelming majority of these personnel have college degrees; several have post-graduate degrees and foreign language capability as well.

QUESTION NO 10:

How many cases, on average, is an investigator at OEE working on at a time?

ANSWER:

On an average, an OEE investigator is assigned 15 to 20 cases. We have procedures to ensure that our agents establish priorities in their case loads so that matters which are of greater operational importance and are time sensitive receive attention in the order of their importance.

QUESTION NO. 11:

How many export administration cases were referred by Commerce to U.S. attorneys in FY 1982?

ANSWER:

In FY 1982, we referred five cases to U.S. Attorneys and three more matters were referred which we jointly investigated with Customs or the FBI. Since July 1, 1982, we have referred to U.S. Attorneys a total of sixteen cases which were primarily the work of, or initiated by, OEE investigators. Most of these cases involved matters being brought to the attention of a U.S. Attorney's office during the course of the investigation rather than formal referrals to the Department of Justice for consideration of a case for criminal prosecution.

QUESTION NO. 12:

As of February 3, 1983, are the Department of Commerce operations, facilities, practices, and resources sufficient to carry out all of the purposes of the Export Administration Act, including both licensing and enforcement?

ANSWER:

The scale of operations at this time is considerably expanded over that which was in effect during most of FY 1982 and earlier. Investigative personnel have been increased from approximately 15 investigators to 47 and are deployed in four metropolitan areas as opposed to two. These investigative agents have been provided with law enforcement vehicles, surveillance equipment, office facilities and access to computerized license information. In addition, we have requested legislative authorities for our investigators to seize commodities being illegally exported, execute search warrants, make arrests, and carry firearms. As noted in the response to Question No. 5, we are providing training for these personnel.

Mr. Wu's staff has assessed the space deficiencies that now exist in the OEE work space in Washington and is working to remedy that situation as quickly as possible.

With respect to the licensing function, we have made significant progress in upgrading ADP support, including an additional $500,000 worth of computer equipment. Also, we have expanded the number of personnel assigned to this function.

At the present time, adequate resources are available to support the additional personnel and to provide them with the equipment which is essential to the performance of their duties.

QUESTION NO. 13:

On June 19, 1982, the President extended foreign policy controls in conjunction with the Soviet natural gas pipeline. On November 29, 1982, the report on these controls, required by law, was sent to the Congress, two weeks after these same controls had been lifted. The report, therefore, was meaningless. Why was the report so delayed?

ANSWER:

We regret the delay in issuing the report and agree that it should have been issued sooner. However, I wish to point out that Administration officials testified before numerous Congressional committees throughout the period the controls were in effect. In addition, written testimony and other materials were provided for the record for each of these hearings. Therefore, while this individual report was delayed, the Congress was still kept informed of the Administration's efforts in this area.

We recognize that these reports must be issued promptly. We will insure that such delays do not occur in the future.

QUESTION NO. 14:

Does Commerce have any arrangements with law enforcement agencies in Western European countries to assist in enforcing the Export Administration Act? Would you describe these arrangements?

ANSWER:

One focus of our efforts in this regard is our ongoing actions to attain harmonization of enforcement efforts among our COCOM allies and other concerned nations. To this end, an interagency working group chaired by DAS Wu and made up of representatives of the State Department, Customs, Justice Department (Internal Security Section of the Criminal Division and the FBI) and the CIA was established to coordinate these efforts. A round of meetings between members of this COCOM enforcement bilateral group and counterpart export control enforcement officials in four COCOM countries was concluded during the week of February 21, 1983. The findings resulting from these meetings are now being studied. Mr. Wu has initially reported that these sessions were most informative and constructive; they enabled us to establish better direct substantive contact with the appropriate authorities overseas. They should yield better cooperation and investigative results in the future.

We also have cooperative contacts with appropriate officials overseas on a case by case basis. These are matters of some delicacy involving other sovereign nations, and we closely coordinate these activities with our embassies abroad. We continue to work closely with our Department's Foreign Commercial Service officers, the State Department and other concerned government representatives in over 100 foreign countries. We also work

with and through the U.S. Customs attaches abroad on a case by case basis in the five countries with whom the Customs Service has mutual assistance agreements. We have learned recently that, notwithstanding any individual agency agreement our country may have with a foreign government agency, the governments of at least the four COCOM countries with whose official government representatives we had enforcement bilateral discussions last week still maintain that no criminal investigation can be conducted on their soil by American investigators alone or independent of the host country participating in the investigation.

We are also exploring the possibility of establishing arrangements with various COCOM countries' Trade and/or Economics ministries that have enforcement or investigative responsibility with regard to trade and commercial crimes.

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QUESTION NO. 15:

Are you coordinating with the U.S. Customs Service, who already has working relationships with foreign customs agencies, these efforts to establish such relations? Would you describe the nature and extent of this coordination, including any memoranda of understanding between Commerce and Customs regarding these efforts?

ANSWER:

As we noted in our response to Question 14, Customs participates in the interagency working group chaired by DAS Wu to harmonize enforcement efforts among our COCOM allies. Customs has also provided assistance in other areas on a case-by-case basis. We recently provided the Treasury Department with a proposed Memorandum of Understanding between Commerce and Customs regarding, inter alia, the conduct of overseas investigations between our two services. We anticipate a response to that proposed Memorandum of Understanding from Customs during March 1983.

QUESTION NO. 16:

With regard to foreign investigations, the Commerce Department has sent cables to our embassies and consulates requesting that investigations be conducted by Foreign Commerce Service Officers and Economic Defense Officers. What training do such individuals have in investigative techniques? Why does the Commerce Department not rely upon U.S. Customs Service operations and connections in these foreign investigations?

ANSWER:

The Commerce Department does not request Foreign Commercial Service (FCS) officers to conduct criminal investigations. From time to time, the Department requests such officers and Economic Defense Officers (EDO) to make prelicensing checks and post-shipment (or delivery) verification inquiries. The FCS and EDO personnel have proven to be valuable assets because of the close working relationships they have developed with members of the foreign business community and high level foreign government officials. These foreign service officers are able to accomplish pre-license and post-shipment confirmation checks, with great success and with little or no attendant difficulties.

The foreign aspect of export enforcement investigations often requires the acquisition of background and collateral information concerning foreign parties which is readily available to our foreign service officers, particularly the Commerce Foreign Commercial Service, or which can be obtained through the wide range of "contacts" these officers have cultivated. We have more than 170 Foreign Commercial Service officers serving in some 120 overseas locations.

While these individuals are not trained investigators, this has not presented an obstacle to effective enforcement results since, where specific investigative-type action is needed, Export Enforcement special agents would travel abroad and work with FCS, EDO or Customs personnel.

In addition, we believe that Commerce's Foreign Commercial Service, because of its continual contact with foreign business and government officials, is often able to function more effectively with regard to the tasks we need accomplished overseas than would a traditional law enforcement organization and they should continue to be used.

While the Department of Commerce does not exclusively rely on the Customs Service in foreign investigations, Customs does provide some support in this regard. We are working with Customs to improve our mutual assistance with regard to overseas investigations.

QUESTION NO. 17:

Why has the Commerce Department been advertising to hire criminal investigators who are willing to carry and use firearms, conduct searches, seizures and arrests when the Department does not have these enforcement powers?

ANSWER:

We have requested these authorities because we believe these powers are necessary to effective export control enforcement. We are also taking steps to obtain them via administrative action on an interim basis.

There is necessarily a lag time between the obtaining of these authorities and an operational capability to utilize them in the proper fashion. Accordingly, one of the criteria we use in our recruitment efforts is past law enforcement experience and expertise with these authorities, since having an individual on board with these proficiencies will enable us to minimize such lag time.

QUESTION NO. 18:

Does it not seem possible to you that the Commerce Department does not have these powers because the Congress did not intend it to be a law enforcement agency?

ANSWER:

No, the current absence from the statute of these authorities does not suggest this inference. The Department of Commerce has been enforcing the EAA and its predecessor statutes for many years. Until recently, aggressive criminal investigation and prosecution were not given high priority by any -- repeat "any" -- agency. The Customs Service did not embark on Operation Exodus until October 1981, nearly a year after the completion of the Spawr case and some four years after the Edler case. Congress itself did not think it important to treat illegal exporters with serious sanctions until 1979 when violations of the Export Administration Act became felony offenses as opposed to misdemeanors. This Administration, as you know, undertook a re-examination of the nature of the illegal technology transfer problem facing this country and has initiated corrective steps to deal with it more firmly than was the case in past Administrations. The obtaining of these authorities is one of the necessary corrective steps. Moreover, a number of Federal law enforcement agencies, the Federal Bureau of Investigation among them, were in operation for a number of years before they obtained firearms authority.

QUESTION NO. 19:

If Commerce is so committed to export administration, why is the highest export administration official a Deputy Assistant Secretary? (Larry Brady has responsibility for both import administration and export administration). Would the Commerce Department favor the creation of an Under Secretary of Commerce for Export Administration, a person who would be an advocate for export administration in the policy-making levels?

ANSWER:

The principal official in charge of export administration is not, as the question implies, a Deputy Assistant Secretary; rather, it is the Assistant Secretary for Trade Administration, Lawrence J. Brady. He oversees the Department of Commerce's commitment to export administration, including both the licensing and enforcement functions. That commitment is evidenced by resource increases of $2,979,000 in FY 1983 and $2,670,000 in FY 1984. In addition, the Department has given considerable priority to all administratively-related requests in these areas.

With respect to organizational changes related to export administration, it would be premature at this time to comment on individual agency changes while the Administration is developing its position on trade reorganization proposals.

QUESTION NO. 20:

Which division in ITA has the lead role in working with the senior interagency group for international economic policy in the setting of overall East-West trade policy?

ANSWER:

Within the International Trade Administration, the primary responsibility for working with the senior interagency group for international economic policy regarding East-West trade rests with the Assistant Secretary for International Economic Policy. However, the Assistant Secretary for Trade Administration participates in the senior interagency group according to the individual issues under consideration by the group which are within his statutory, regulatory, and functional responsibilities.

QUESTION NO. 21:

The Inspector General of Commerce was extremely critical -- and I share that criticism of what I see to be incredible practices -- of the enforcement operation's license applications screening process. As the report indicated, this is "an antiquated manual process which, in practice, does little to help detect violations of export laws and regulations . . . The Application Screen process involves . . . processing clerks who manually check all the information on the face of an application against the large rotary card screen file." The Inspector General's report states that this rolodex intelligence operation has "resulted in suspect licenses going through the screen undetected." Moreover, "The current process also does not screen out the repeat violators who change the name of their company, use a new intermediary company, change their own names, or recruit new 'principals' for the illegal export operations." That report was issued in June of last year. Would you describe how this current screening process has been improved to date?

ANSWER:

The Commerce Department has taken major steps to improve overall export license application processing. These steps, which concern our automated data processing (ADP) capabilities, are going far beyond correcting the shortcomings noted with respect to the application screen process used for enforcement purposes. We have already augmented the manual system of application screening by using the capabilities of our existing ADP system to isolate export licensing information, such as country of ultimate destination, dollar value of the goods involved, applicant, consignee, etc., to develop profiles for proactive enforcement purposes. The ADP upgrade effort will not only permit automated data analysis for compliance and intelligence purposes, but also enable license processing monitoring on a daily basis, provide exporters with fast and accurate license status information, and provide for automated licensing of free world cases nationwide through facilities at district offices.

As part of this upgrade effort, various elements of the Office of Export Enforcement and the Office of Export Administration are working closely with a professional ADP consulting firm to enhance the overall licensing and enforcement process, including the licensing screen. This effort is taking into consideration not only the needs of the Office of Export Administration to act in a time-sensitive manner with regard to processing export license applications, but also to provide the Office of Export Enforcement (including its field offices) with a powerful tool to accomplish its export enforcement mandate. We are making substantial progress to this end and estimate that the first phase of our expanded system, including an automated licensing screen, will be operational within two months of the system becoming "secure".

In reference to the problem of repeat violators who change personal or company names, or use new intermediate or principal associates, we note that the screening process, manual or automated, is only as good as the information that supports it. The Commerce Department's wealth of information regarding domestic and international business, the extensive intelligence received by OEE from the intelligence community and our own in-house intelligence and other analytical resources provide us with a unique source of information concerning repeat offenders. This source of intelligence, coupled with our other law enforcement and intelligence contacts, gives us an information base for enforcement screening that cannot be equaled by any other agency.

QUESTION NO. 22:

Suppose that we were starting at square one to set up an export control system. Would you please make the strongest argument that you can for placing the administration of export controls--both licensing and enforcement--in the Commerce Department?

ANSWER:

The Reagan Administration's goal in administering national security controls is to strike an appropriate balance between protecting the nation's legitimate security interests while pursuing the nation's legitimate commercial trade interests. The Department of Commerce has actively worked to develop a balance between these two aims--a balance cognizant of commercial trade interests yet mindful of security objectives; and a balance that produces clear and predictable regulations to guide U.S. industry.

The current export control structure by which Commerce, in close consultation with Defense, State and other interested Federal agencies, administers export controls, provides the necessary balance among national security, political, and economic considerations involved in export control decisions. Any major structural change in the export control process may upset this balance to the detriment of the overall national interest.

In addition, by being a part of the Commerce Department, export control officials can effectively use the expertise of other parts of Commerce. For example, the Foreign Commercial Service, with its world-wide network, provides needed enforcement, licensing and foreign availability information. Also, the International Economic Policy section assists in evaluating the economic impact of export controls.

Separation of the licensing and enforcement functions would be detrimental to the Commerce units charged with those responsibilities:

- The Office of Export Administration (OEA), which is the export licensing agency of Commerce, and the Office of Export Enforcement (OEE) work closely together and are mutually supportive. OEE provides OEA with intelligence to be used in determining whether a license should be issued and assists OEA in ascertaining whether the provisions and conditions of licenses are adhered to once they are issued. OEE relies on OEA's technical personnel and data to determine whether certain commodities or technologies have been targeted by our potential adversaries for acquisition, and whether a validated export license is required in a given case, and to obtain information on any past export activities on the part of suspect parties.

- The validated licensing process in OEA affords OEE the investigative tool of the pre-license and post-shipment check procedure to establish the bona fides (or lack thereof) of a proposed or accomplished export transaction.

- OEA now refers about 600 license applications a month to OEE to determine whether any information exists that would preclude the issuance of a license. If either OEE or OEA were removed from the Department, unneccessary delays in processing of license applications would result.

- The business and exporting communities are "comfortable" in dealing with the Department of Commerce, and traditionally have been major sources of high quality enforcement leads.

- The enforcement and licensing functions should remain in the same Department where export policy under the Act is basically established to permit unencumbered input to the policy development process by both functions.

- Situated within the Department for more than 30 years, OEE (and its predecessors) is unique in that it is the only federal agency whose reason-for-being is solely export control enforcement and whose resources are solely dedicated to that singular mission. The enforcement priorities of other major law enforcement agencies change from time to time and the deployment of their resources changes accordingly. This is not true of OEE which has but one mission - strategic export control enforcement.

- OEE's personnel have the greatest expertise in the federal government in conducting export control investigations since this is their sole mission, priority, and the function to which their formal and on-the-job training is solely directed.

- OEE is linked to the Department's Foreign Commercial Service located in more than 120 posts worldwide. The FCS is attuned to business practices and methods and a source of assistance in the conduct of pre-license and post-shipment checks to verify the bona fides of proposed and accomplished export transactions and a source of useful intelligence.

- OEE's objectives are not solely to develop cases for criminal prosecution but also to identify and shut down channels of illegal diversion by whatever means, including denial of export privileges through administrative proceedings.

- Only the Department of Commerce has statutory authority for the administrative imposition of sanctions of denial of export privileges and civil penalties. The mechanism for this process is well established in the Department. The Department's Office of General Counsel has attorneys experienced in legal issues involving export control investigations and in representing OEE in administrative proceedings, as well as in assisting United States Attorneys' offices during the course of criminal prosecutions.

- OEE's enforcement program has the full support of Commerce's International Trade leadership from Secretary Baldrige on down, as evidenced by the considerable enhancement of OEE's resources (field offices, personnel and equipment).

- The present jurisdictional arrangements regarding the implementation of the Arms Export Control Act and the ITAR are often cited as precedent for placing the export enforcement and export administration function in different agencies. This analogy is strained and far more apparent than real. The list of controlled items subject to control under the Export Administration Regulations (EAR) is far longer and more complex than is its counterpart list under the ITAR. The universe of exporters subject to EAR is also far larger than that under the ITAR. Determinations as to whether an item is eligible for a license or not eligible under the EAR turns on complex technological factors.

QUESTION NO. 23:

In your testimony before the Committee, you indicate that Mr. Wu is carefully shielded from the trade promotion influences at Commerce. What is being done to shield the policy making offices at Commerce -- policy officials at Commerce -- those having jurisdiction over export administration -- from the trade promotion influences of the Commerce Department?

ANSWER:

Mr. Wu is responsible to the Assistant Secretary for Trade Administration whose duties cover export and antiboycott compliance enforcement, export administration and import administration issues. Neither of these gentlemen has any responsibility for trade promotional activities. One of the duties of the Under Secretary for ITA is to insure the integrity of the various functional units within ITA. Trade promotion activities do not in any way impede or detrimentally affect ITA's enforcement activities.

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

March 4, 1983

Honorable Jake Garn
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are my answers to the additional questions you sent me regarding the Export Administration Act. Also enclosed is a copy of the implementation plan to which your additional questions refer. As you will note, the audit implementation plan is marked "For Official Use Only." We ask that you provide adequate physical safeguards for this document and that it not be released to the general public at this time without clearance from Mr. Olmer.

I appreciate the importance of your committee's deliberations as it considers the reauthorization of the Export Administration Act. The constriction of technology leakage from this country is critical and, with this in mind, I have tried to be fully responsive to your questions on the matter.

I understand your legislative schedule is short, but if there is any further information I can provide, I would be glad to do so quickly.

Sincerely,

Sherman M. Funk
Inspector General

Enclosures

QUESTIONS FOR SHERMAN FUNK
SENATOR GARN

1.

Q. Did you receive the detailed implementation plan that you requested from the Under Secretary for International Trade within the 60 days that you requested?

A. No. The request for an implementation plan was made on July 13, 1982, and we received the implementation plan on October 27, 1982, a period of more than 90 days.

2.

Q. How adequate was it?

A. The implementation plan addressed all of the issues raised by our inspection report and the plan would carry out the intent of our recommendations. All of the actions in the implementation plan are steps in the right direction, and they reflect what I believe to be a serious effort to improve export enforcement. Whether these improvements are of sufficient magnitude to have any real impact on technology leakage I could not say at this time without a more indepth review of the program and the overall technology leakage problem. I intend to initiate such a review, that is a management audit, in early FY '84.

3.

Q. To your knowledge to date, how has it been implemented?

A. The export enforcement unit has taken significant action to implement the plan they submitted to us. Hiring has begun, reorganization has taken place, increased resources have been budgeted, training has been completed and continues, travel policies have changed, equipment has been acquired, and other actions of equal magnitude have been taken. Where action has not occurred, at least tangible planning for action in the near future has evolved where there was none before. Only in a few instances do I think more could be done, as I mentioned in my prepared testimony. My Office may well discover that more in fact is being done as my staff continues following up on the implementation of the plan.

16-556 O—83——12

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

INV 6-03 E:I:S:T

Dear Chairman Garn:

Thank you for your letter of February 18, 1983, whereby you requested Customs to respond to additional questions relating to Operation EXODUS.

Enclosed with this letter are the responses to your questions. I am sure this information will assist the Committee's oversight hearing on the Export Administration Act.

Please do not hesitate to contact me if you should require additional information concerning Operation EXODUS or the U.S. Customs Service.

Yours faithfully,

Alfred R. DeAngelus

The Honorable
Jake Garn
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Enclosures

QUESTION:

Can the Export Administration [Act] be adequately enforced if criminal enforcement were left solely to the Customs Service?

ANSWER:

The Export Administration Act can be successfully enforced with the U.S. Customs Service having sole enforcement responsibility. The Customs Service would continue to rely on the Department of Commerce to provide critical information relating to license histories of alleged violators as well as to make the appropriate license determinations regarding export merchandise. Customs would also continue its strong liaison relationship with the FBI, the Department of Defense, the intelligence community and law enforcement agencies of foreign governments.

QUESTION:

Can it be adequately enforced if it were left solely to the Commerce Department?

ANSWER:

The Export Administration Act cannot be adequately enforced if left solely to the Department of Commerce. Although Commerce has statutory authority to enforce the Act, they lack the enforcement powers to accomplish the mission. Commerce agents are powerless to make arrests, serve search warrants, conduct warrantless searches on our nation's borders, take sworn statements under oath or carry firearms. Additionally, Commerce has neither the trained manpower nor facilities available at our strategic export ports to safeguard our nation's borders against illegal exports.

QUESTION:

The Department of Defense recently transferred approximately $25 million to the Customs Service for Operation EXODUS. Why do you think this money was transferred to the Customs Service rather than the Office of Export Enforcement?

ANSWER:

The U.S. Customs Service, having over 200 years experience in safeguarding our nation's borders, is the agency most suited to enforce both the Export Administration Act and the Arms Export Control Act. Customs has a highly trained contingent of investigators and inspectors geographically located at strategic export locations and in close proximity to manufacturers and shippers of high technology. Additionally, Customs has the statutory authority to make arrests, conduct warrantless searches and seizures in border areas and to require production of export records for examination. The results from the first year of our Operation EXODUS program, to disrupt the flow of U.S. strategic technology to the Soviet bloc and its allies, clearly demonstrate that Customs is on the right track toward accomplishing our goal. The Department of Defense recognized our contribution to national security through our enforcement efforts in the Operation EXODUS program. Customs is the most highly visible force in the area of export control, having the staff, the equipment, the know-how, and the contacts to effectively perform its mission. We believe the Department of Defense transferred funds to Customs as opposed to Commerce due to our proven track record. By "investing" in the Customs Service program known as Operation EXODUS, the Department of Defense will get the "most bang for the buck."

QUESTION:

Has the Commerce Department transferred any funds to Customs for Operation EXODUS?

ANSWER:

The Commerce Department has not transferred any funds to Customs for Operation EXODUS.

The Department of Defense supported expanding Customs Operation EXODUS capabilities and increasing available resources by transferring $30 million to Customs FY 1983 appropriation. Congress did not transfer the full amount, however, it did increase Customs FY 1983 EXODUS program to a total of $20 million.

At the present time, there are no expectations for FY 1984 of Customs being the recipient of additional resources transferred from other agencies to support Operation EXODUS.

Theodore L. Thau
336 Amherst Drive
Salinas, Ca. 93901

Feb. 28, 1983

Senator Jake Garn
Chairman
Senate Committee on Banking, Housing
and Urban Affairs
Washington, D.C.

Dear Senator Garn:

With reference to my testimony on the bill to transfer jurisdiction over export controls from the Commerce Department to a proposed new independent agency, I have your letter of February 18, asking me to answer in writing four questions which you were not able to ask me during the February 3 hearing, on account of time constraints.

As I wish to cooperate with your Committee in this matter, I have studied your questions in the light of my recollections, as refreshed by my review of my copies of Congressional hearings and reports and Commerce Department reports on U.S. export control administration and enforcement. Based on such recollections and review, I have endeavored to answer your four questions, and submit your questions and my answers on the attached pages. If my answers raise any further questions, please feel free to ask me for clarification.

Respectfully submitted,

Theodore L. Thau

Attachment--7 pages.

Feb. 28, 1983

SUPPLEMENTAL QUESTIONS BY SENATOR GARN AND ANSWERS SUBMITTED BY THEODORE L. THAU FOR SENATE BANKING COMMITTEE HEARING ON BILL TO TRANSFER EXPORT CONTROLS FROM THE COMMERCE DEPARTMENT TO A PROPOSED NEW INDEPENDENT AGENCY

1. Why shouldn't we give the Commerce Department more time to get its operations in order?

This question assumes, I believe, that if Commerce were given enough time and money its present heads would cure the basic problem which has afflicted the Department's administration and enforcement of export controls since it was first given jurisdiction over them in 1945. But the testimony of these Commerce officials which I have heard and read is that their notion of a cure is to spend more money, hire and train more people, provide them better office space, establish field offices, raise the reporting level of the Compliance Unit, and improve working relations with Customs. All these plans for beefing-up enforcement are fine, but they do not begin to reach the basic problem. That is the inherent conflict of interest between trade promotion and export control which besets everyone in Commerce from the top to the bottom. With all these pledged reforms, export control personnel in Commerce will still be subject to the supervision and influence of superiors wearing the two hats of trade promotion and export control. The decisions of what commodities and technology to control or remove from control, which licenses to approve or deny, and which suspected violations to investigate and prosecute, or to drop, will continue to be made by, or be subject to the favorable glance or frown of, these two-hat-wearing officials. And even if they actually behave with the maximum sensibility and sensitivity, the appearances will always be against them. Just as it is wisely said that there must be, not only justice, but the appearance of justice, so should there be, not only the absence of conflict of interest, but also the appearance of such absence, as well.

To be sure, the Export Administration Act of 1979 requires a balancing of U.S. economic interests with our foreign policy and national security interests, in carrying out export controls. But balancing by officials solely concerned with that task, in an environment where all are involved in such balancing, as contemplated by the present bill, would be a far different thing from any attempted balancing of such competing interests, on a part-time basis, by a Commerce Department Secretary, Under Secretary, Assistant Secretary, or deputy, whose experience lies, and whose days are largely spent, in fostering, promoting and developing the foreign and domestic commerce of the U.S., often in ways having nothing to do with export controls, but also at times in ways that are potentially, if not actually, in conflict with export control goals. Even with the best of intentions, such Commerce officials, as administrators of the 1979 Act, are bound to over-balance, favoring U.S. economic interests disproportionately, to the disadvantage of U.S. national security and foreign policy interests. Indeed, from the testimony I have heard and read, it appears to me that Commerce officials believe that such over-balancing in favor of U.S. economic interests is desirable, and perhaps necessary; and that only Commerce officials--but not an independent administrator--can safely take U.S. economic interests into account, in carrying out the balancing functions pre-

scribed by the 1979 Act. They evidently do not believe it would be enough if Commerce were to give its advice as the advocate of U.S. economic interests before the proposed independent agency administrator, side by side with State and Defense. Do they really believe that the economic interests of the U.S. can be balanced properly only if they are both advocate and judge?

As the records show, the history of Commerce's administration and enforcement of export controls is replete with pledges by top Commerce officials to Congress, that the Department would do a good job if given more money and more time to get its operations in order. The records further show that such improvement efforts have rarely lasted beyond the tenures of the officials who made the pledges, and not even always that long. In this regard, consider that over the 38 years that Commerce has administered export controls, the Department has had 17 Secretaries, holding office only about two years on the average, and with 6 of them serving only one year or less. It is my recollection that the records of the Department would show similarly brief sojourns for Under Secretaries, Assistant Secretaries, and their deputies.

Once the pledging officials departed--usually back to the business community whence they came--their promises to Congress were generally soon forgotten, even when known to their successors, and Commerce relapsed to the status quo ante, the condition before the pledges were given, when the primary and historic duty of Commerce to foster, promote and develop the foreign and domestic commerce was again favored, at the expense of the administration and enforcement of export controls.

If conflicting interests is the real and basic problem with Commerce's administration and enforcement of export controls, and I firmly believe it is, then it would only be wasteful of time and money further to delay efforts to reach the right solution. There can be no hope for a long-term cure--for anything more than band-aid treatment of symptoms--in the efforts Commerce officials are pledging to make to get their operations in order. The sooner export controls are committed to an independent agency, the better will it be for the U.S., for export controls, and even for Commerce.

2. In 1980, when I first introduced my bill to create an Office of Strategic Trade, Lawrence Brady--who now serves as Assistant Commerce Secretary for Trade Administration--indicated that Commerce had persistently sought to reduce control provisions in regulations and the export control statutes. Has that been your observation also over the course of your experience in this area?

To answer this question I have reread Mr. Brady's testimony in the printed Hearings before the Senate Committee on Governmental Affairs, 96th Cong., 2d Sess., on S. 2606 (Sept. 1980), pp. 241-268, as well as my own written statement, at pp.290-298.

With regard to Mr. Brady's statements at that time, I should like to observe preliminarily, before dealing specifically with your question, that it would have been extremely enlightening to have heard, in the Feb. 3, 1983 hearings of the Banking Committee, a point-by-point listing by the Commerce Under Secretary, or other Commerce officials, of the reforms made in Commerce's operations to meet the charges Mr. Brady gave in 1980--something on the order of the listing of reforms made

and pledged to be made by Commerce to meet the charges advanced by Commerce Inspector General Funk in regard to the more limited areas of Compliance operations and Customs enforcement relationships with Commerce export controllers.)

Turning to your question to me, I recall that Commerce, from time to time, and especially from the mid-60s on (when the business community began to drive strongly for relaxations of export controls), made frequent and substantial regulatory and procedural changes designed to reduce the impact of controls. However, I do not recall Commerce making recommendations to Congress to modify the law in the interest of relaxation of controls, as apparently occurred in the five or six years before Mr. Brady testified in 1980. Instead, I recall Commerce strongly urging Congress not to tighten export controls, such as when, in the early 60s, Congress decided to require export controls to be used to curb the Soviet "economic potential", in addition to the long-standing requirement to use controls to counter the Soviet "military potential." When Congress made this change, against Commerce objection, Commerce told Congress in its next quarterly report that it would construe the legislative requirement as applicable only to commodities and technology which would contribute significantly to the Soviet economic potential, as distinguished from its military potential, and then only if comparable commodities and technology were not available abroad. The practical effect was to nullify this law.

Again, I recall Commerce, in the mid-60s and afterward, first urging Congress not to adopt anti-boycott legislation and make it part of the export control law, and then pleading for its adoption in diluted form. When such legislation was enacted, at first in weak form, Commerce for a long period found ways to administer and enforce it weakly, in the interest of the business community's desire to comply with boycotts or anything else for the sake of lucrative trade with the boycotting countries. I believe Congress had to call Commerce officials to explain several times, and had to enact several tightenings of the anti-boycott provisions before Commerce came around to meaningful administration and enforcement, a process that took some six or eight years.

As to Commerce's own export control regulations, procedures and forms, the first 13 years I was there, in charge of the legal aspects of enforcement, was generally a period of strengthening--revising the Census Bureau's Shipper's Export Declaration so as to make it an export control document as well as a statistical form; creating the foreign consignee's statement form to elicit destination control representations in a legally enforceable form; imposing the requirement for a destination control notice to be placed on letters of credit and bills of lading for the purpose of enlisting carriers, forwarders, banks and other such institutions in the U.S. export control enforcement program; and adopting a considerable number of other devices to carry out the Export Control Act of 1949. To be sure, most of these activities were spurred on, as far as higher level Commerce officials were concerned, by rather frequent Congressional investigations, from 1948 through the 1950s. And, in that period the business community was generally wary about pushing hard and loudly for export control relaxations, in view of McCarthyism, public campaigns against business firms dealing with Communist countries, labor opposition, and other inhibiting factors which caused business men not to press their Commerce Department confreres--except for the U.S. to follow suit when the British and then other Cocom members sharply relaxed their export controls upon the ending of the Korean war.

As to the period of the 1960s, I have generally described the conditions which I then observed in my principal written statement for the Banking Committee and in my above-cited 1980 statement, and will not repeat that material here. I do strongly recall from 1969 o the drastic relaxations in export control regulations, procedures and forms that then occurred, in part to meet the revisions made by the Export Administration Act of 1969, but mainly to satisfy the business community's desires--desires with which the businessmen officials of the Department were manifestly quite sympathetic. Elimination of paperwork became a watchword, a justification for eliminating documentary controls of proven enforcement worth. Huge lists of commodities had to be decontrolled quickly, even though far too many and too fast for careful Defense and other advisory review. And, as I have already written, the interagency committee structure became a largely pro forma mechanism for approvals, except in the rare case that the Commerce licensing officials presented with recommendation for denial, or the one that the Defence member was prepared to appeal from a rejection of his denial recommendation.

3. Why are the problems at the Commerce Department perennial?

I presume this question is addressed to the Commerce Department's administration and enforcement of export controls, for I am sure that the Department has no problems of a perennial nature when it comes to performance of its always pleasant duties of fostering, promoting and developing the foreign and domestic commerce of the United States!

From my 26 years experience in working with Commerce Department officials, from Secretary Sawyer to Secretary Stans, and with the numerous Under Secretaries, Assistant Secretaries, deputies, office directors, and bureau chiefs who served between 1948 and 1974, it was and is my conviction that almost everyone was a successful businessman who took time off from his busy career to serve his country for as long a time as he could be spared--usually no more than two or three years. They were accustomed to running their businesses certain ways, and often sought to run the Department, or their area of concern, in the same manner--at times even instituting reorganizations to achieve this result. Such practices probably had much merit, in keeping the Department up to date as to the best ways to foster, promote and develop our foreign and domestic commerce.

But these same businessmen were all too often ill-equipped to be trade controllers, regulators, enforcement officials, or even commodity analysts and licensing officers, and their business experiences frequently led them to be questioning, and even suspicious, of such export control personnel as were under their supervision. At the same time they were, as business executives, used to making fast decisions without much consultation, inclined to be trusting of businessmen with whom they might meet, confer, lunch, travel, etc., and usually impatient of government red tape and ethical codes. As a U.S. attorney recently said of an EPA regional administrator, "After years of working in the private sector, [they] may not have recognized the impropriety of [their] actions." To many of these officials any thought that their bending of export control restrictions to their trade promotional objectives could be called a conflict of interest was the farthest thing from their minds, largely because it was not the kind of ethical standard they often were exposed to in their business careers.

Export control personnel early learned that their departmental superiors found it pleasant to hear of commodities decontrolled, licenses granted,

and red-tape eliminated, but not of licenses denied, business firms charged with violations, or controls that had to be imposed to curb circumventions of existing rules. And, in general, export controls was a much less pleasant subject to engage the energies of these businessmen officials of the Department than speaking at business conferences, opening foreign trade fairs, and socializing with other business leaders at round tables, and the like, about their mutual interest in fostering, promoting and developing the foreign commerce of the U.S.

Export promotion through display of U.S. production at foreign trade fairs was always of great interest to the Department, and from the late 60s on this interest was focussed on ever greater participation by U.S. firms in Commerce Department sponsored exhibits at trade fairs in the USSR and Eastern Europe, going beyond the long-time favored countries of Poland and Rumania. Naturally, the U.S. business community also generally pushed for this promotional activity, and it was not long before export control personnel was asked to license for display at such fairs, not only goods that would easily be licensed for sale to such countries for civilian uses, but also sophisticated industrial and scientific products of such potential strategic uses, or embodying such militarily useful technology that a license would not have been recommended for their sale to a Communist country. The rather ingenuous argument was advanced by Commerce officials, the U.S. producers, and even the State Department, that such exhibits were good for the U.S. image, letting the peoples and leaders of the Communist countries see the benefits of our way of life. Assurances were given that such exhibits would be protected against theft or copying. Unfortunately, however, such exhibits too often only whetted the appetites of Communist leaders to buy or copy these sensitive U.S. products, and the U.S. producers then to press Commerce very hard for approval of permanent licenses. Also, such practices at times led other COCOM countries to urge the decontrol of such products on the ground that the U.S. was openly exhibiting them--obviously for sale. Or, Commerce might learn, as was the case years before when video equipment sent to the USSR to help Vice President Nixon in his televised kitchen-cabinet debate with Khrushchev was found to have been examined internally before its return to the U.S., that our sensitive product had been examined for extractible technology. But such problems did not dismay Commerce officials or U.S. producers, for both could well have regarded open U.S. participation in such fairs better than the prior practice of having U.S. products made abroad by licensees or other affiliates exhibited in the pavilions of the West European countries where such affiliates operated.

From such experiences, and many others, I have been led to conclude that export control problems at Commerce are perennial because the very people who are the right ones to promote foreign trade are almost always the wrong kind of people, with the wrong experience , and the wrong standards, to be administrators of export controls.

4. How legitimate are foreign availability assessments by the Commerce Department?

In the 11 years I was in the Commerce advisory committee structure, I dealt with hundreds of cases involving the related subjects of foreign availability and comparability. I hardly ever recommended approval of a license or decontrol of a commodity with satisfaction as to the evidence offered regarding foreign availability and comparability. The easiest were those where the same product was made abroad by a U.S. firm's licensee, sometimes with technology developed under Defense R & D contract without requirement of Defense clearance of any transfer of the data or of civilian

spin-offs of the technology, to any foreign affiliate or licensee of such U.S. firm. In those instances, unless the product was on the COCOM multilateral control list and the foreign producer was in a COCOM country, there was almost no way to avoid a conclusion that foreign comparability existed, though perhaps a question might still properly be raised as to whether there was foreign availability in requisite quantities in a reasonably short time-span.

Generally, though, comparability was a more question-raising subject. Is a comparison of the purchase prices and operating costs of the U.S. and foreign machine tools relevant? What about the unit cost of the product of each machine? Suppose the quality of the U.S. product is better, but the foreign-made product would "do the job?" Does the fact that the USSR obviously prefers the U.S. machine "prove" it is so much better that the foreign machine should be declared "not comparable?" In the case where the foreign machine is produced in a COCOM country, should we postpone a finding of comparability and availability until we ascertain whether that country and COCOM will hold the line, or should we go ahead with approval in the fear that bringing the matter to COCOM attention in advance will signal to that country and its producer a trade opportunity to try to take away from the U.S. firm?* These are only some of the questions we had to wrestle with on the issue of comparability.

The issue of availability raised still other questions, of like difficulty in their resolution.

Obviously, to us at that time, it was not enough to have representations by the U.S. applicant that a foreign machine was comparable to his. He must have argued that his was superior, or learned that the Communist buying agent and his technical clients considered the U.S. product sufficiently better to want to buy it. Therefore, could we be sure the seller would be realistic with us, to his possible detriment, while puffing his wares to the buying agent?

Could we rely on sales literature, manuals, etc., put out by both firms? Or would both be affected to an uncertain extent by pride of the maker and sales puffing?

Could we check with users of both machines? Yes, if both were being used by U.S. companies, but that was not often the case for foreign-made equipment.

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* Apropos this question, I recall at a Ditchley Conference asking a U.K. bank official why his country had given the USSR very long credit terms, far beyond the Berne Convention terms. His reply was that the USSR purchasing agent told the U.K. that another COCOM country would give the same long credit terms on purchase of a comparable plant, if the U.K. would not. I asked if the U.K. had checked the truth of this claim with the other COCOM country. His answer was, "No, because they wouldn't tell us, and we wouldn't believe them if they denied it."

Yet, how often could U.S. government people be sent abroad to examine foreign-made equipments and their products, and then to some place in the U.S. to examine the allegedly comparable U.S. equipment and its products? And how many export control of other U.S. government persons could be found with the background needed to make an intelligent comparison?

A reading of the 1961 hearings and report of the Senate Committee on the Judiciary's investigation of a proposed export of miniature ball-bearing grinders to the USSR, and a reading of the Congressional hearings and report following the 1972 approval of a Commerce license to ship a large quantity of the same kind of machines to the USSR, and their eventual shipment, will reveal far better than I can why it is almost an illusory standard that is set up in the 1979 Act, the requirement for approval if there is foreign made equipment comparable to the proposed U.S. export and it is available from the foreign source to the USSR. It is a standard that can hardly ever be met on the basis of objective, reliable evidence. To oblige Commerce to license on the basis of that standard is realistically to require it to rely on generally unreliable information, almost to be obliged to perform its duty arbitrarily and even capriciously.

SUMMARY OF EXAMPLES SUBMITTED BY SENATOR NUNN:

DIVERSIONS AND ATTEMPTED DIVERSIONS -- 1977 to 1981

1. The Soviets equipped a semi-conductor plant with U. S. machinery. From 1977 to 1980, the Soviets purchased $10 million in American-made high technology from a syndicate of electronics broker firms in Los Angeles. Transshipped to Moscow through Western European cities, the machinery enabled the Soviets to close the gap between themselves and the West in inegrated circuitry/microcomputer know-how.

2. Polish spies compromised Amrican radar specialist William Bell. For bribes totalling at least $110,000, Bell gave Polish agents secret information on the radar systems of the B-1, Stealth and F-15 aircraft, Navy and Air force missiles, Army tanks and a NATO air-defense technology.

3. Walter Spawr sold laser mirrors to the Soviet Union. Manufacturer of some of the most advanced laser mirrors in the world, the Spawr Optical Company of Corona, California was anxious to expand foreign sales. When the Soviets tried to buy the firm's laser mirrors, Spawr requested an export license from the Commerce Department. His application rejected by Commerce, Walter Spawr shipped the mirrors to the USSR anyway. For the $60,000 they paid Spawr, the Soviets are believed to have saved millions of dollars and nearly 100 man-years in research and development.

4. East German spy owned half of Silicon Valley firm. Mr. Rudolf Sacher, believed by Western intelligence analysts to be an East German spy, held half ownership of a high technology company in Santa Clara County, California. Sacher's partner, Peter K. Gopal, reportedly was tied in with an illegal effort to steal and reproduce and then sell overseas advanced microprocessor chip technology. Gopal was convicted of receiving and possessing stolen trade secrets, bribery and conspiracy. The extent to which Gopal and Sacher were able to arrange earlier technology diversions to the Soviet Union will never be known.

5. Stolen Intel Corporation equipment was found in Munich. Thousands of integrated circuts with a value of $1 million were stolen from Intel Corporation in Santa Clara, California. The integrated circuits were then traced to Southern California, Arlington, Virginia, and Munich, West Germany.

6. A West German man was arrested in January of 1981 by U. S. Customs agents at the John F. Kennedy Airport in New York while trying to transport a microwave surveillance receiver system used by the American armed services. The West German was a courier for a syndicate of Western European violators of U. S. technology control laws.

7. An Austrian businessman who owned two companies in the U. S. bought a special gunsight camera used on the Air force F-4 fighter aircraft and tried to ship it aboard his own flight from JFK Airport to Munich. Arrested and his high technology luggage seized, the Austrian was found to have business cards of several Soviets officials.

8. Claiming to be working for the Soviets, Marc Andre DeGeyter, a Belgian, offered $150,000 to $200,000 to executives of high technology firms in suburban Washington, D. C. for a secret computer program. FBI agents arrested him in a staged computer program sale at JFK Airport.

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